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ABSTRACT

This report examines the status of women and the laws that have been enacted to protect women from discrimination in employment. Written in lay language, it examines employment and occupational statistics for women in the United States and in Kentucky. Following an introduction in Chapter 1, the report presents four chapters surveying the problem, as well as a chapter of recommendations for action. Material covered in the chapters is as follows. Chapter 2 sets out in detail statistical information on both the nation and the state of Kentucky demonstrating the disparity between the income of men and women, the unequal distribution of women within the workforce, and the position of women in the workforce. Chapters 3 and 4 present a basic primer on sex discrimination. Chapter 3 attempts to set out the illusory nature of stereotypes which engender discriminatory acts against women. Chapter 4 summarizes briefly the body of federal and state law which has been enacted to ensure that women have employment opportunities equal to men. Finally, Chapter 5 gives a survey of federal cases construing the anti-bias laws, and chapter 6 presents the conclusions of the study and recommendations for future laws and practices. (KC)

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SEX DISCRIMINATION IN EMPLOYMENT

Prepared by
J. David Morris
Linda B. Wood

Research Report No. 171

Legislative Research Commission
Frankfort, Kentucky
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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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FOREWORD

In November 1978, the Democratic Women's Club of Kentucky requested that the Legislative Research Commission prepare a comprehensive study pertaining to sex discrimination in Kentucky, to be presented to the 1980 session of the General Assembly. This report examines the status of women and the laws which have been enacted to protect women from discrimination. Unlike many such reports, it is not written in the language of lawyers or economists, but is written so as to give the lay reader a basic understanding of the nature of the problem of sex discrimination, a problem that affects all Kentuckians, not just Kentucky women.

This report was prepared by J. David Morris and Linda Wood, and was edited by Dr. Charles Bush. The manuscript was typed by Cheryl Jenkins.

Vic Hellard, Jr.
Director

The Capitol
Frankfort, Kentucky
January 1980

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CHAPTER I

INTRODUCTION

As this century approaches the beginning of a new and perhaps difficult decade much attention is being focused on the conservation and best use of our natural resources. In Kentucky, attention is focused on coal, farmland, rivers, streams and lakes. It has become of utmost importance not to squander or waste those assets. But one of Kentucky's prime assets has been given small attention and has been squandered. That asset is the people who make up the workforce in Kentucky. This most important of Kentucky's resources has been squandered because its full potential has yet to be realized. The full potential of Kentucky's workforce has not been realized because women have not been allowed to assume their rightful place in the workforce, and as long as artificial limits are placed upon the employment opportunities of women, it will never be reached.

> Although women in the workforce have a somewhat higher than average schooling than men, they more generally work in jobs far below their native abilities, or trained capabilities. Barriers to women's employment and to their occupational progress generate feelings of injustice and frustration. Moreover, failure to develop and use the talents of women is a waste the Nation cannot afford. The public interest requires elimination of restrictions on employment of women and assurance of fair compensation and equal job treatment on a merit basis.[1]

The purpose of this study is two-fold. Chapter II sets out in some detail statistical information on both the nation and the state demonstrating the disparity between the income of men and women, the unequal distribution of women within the workforce, and the position of women in the workforce.

Chapters III through IV present a basic primer on sex discrimination. Chapter III attempts to set out the illusory nature of stereotypes which engender discriminatory acts against women. Chapter IV summarizes briefly the body of federal and state law which has been enacted to ensure that women have employment opportunities equal to men. Finally, Chapter V gives a survey of federal cases construing the anti-basis laws.

It is hoped that this report will serve to educate the public as to the nature and seriousness of sex discrimination in the United States, and specifically in Kentucky. It is written in the belief that if a person is aware of and understands a problem, he will not ignore it but will seek to find a remedy for it.

CHAPTER II

WOMEN IN THE WORKFORCE

This chapter deals with the occupations of women and with a comparison of salaries paid to female and to male workers, both generally and within the same occupation. As will be illustrated by this chapter,women are escalating their entry into the labor market, the typical female works out of economic necessity, and most are employed in the traditional fields in which females have been employed since the 1940s. Further, females earn approximately 59 percent of the salary of male workers, despite the fact that female workers are as well educated as male workers.

Occupations of Female Workers

Profile of Female Worker

Females have been entering or re-entering the labor force in record numbers during the present decade, and the trend is continuing. Table I, which includes data on female workers from 1900 to mid-1979, illustrates this trend. The 1900 female labor force of 4,999,000 had increased to 31,560,000 by 1970 and to 43,094,000 by mid-1979. As noted in the same table, the percentage of females comprising the workforce rose from 18.1 percent in 1900 to 36.7 percent in 1970, and to 41.2 percent in mid-1979. During the same period, the percentage of females age 16 and over who work increased from 20.0 percent to 43.4 percent, and then to 50.8 percent.

The greatest increase in female workers has been in the 25 to 34 age category. Despite the fact that over 70.0 percent of females in this age group are married, living with a spouse and have minor children, 62.0 percent of these females work.[2] The participation of these females in the labor force increased 7.4 percent from 1970 to 1979 and is continuing to increase.

The U.S. Department of Labor has postulated a number of reasons females are escalating their entry and re-entry into the labor market. By the late 1960s, post-World War II baby boom members had reached labor force age, so there were more females to consider working. The country was experiencing a period of rapid economic growth, which would have made jobs for females easier to find. The females entering the workforce were better educated and had the protection of newly-passed laws prohibiting sex discrimination in wages and employment.[3]

Another reason for this escalation, particularly in the 25-34 age category, may be the fact that the birth rate per thousand population fell from 19.4 in 1965 to 14.7 in 1976, the lowest level ever recorded. The rate in 1978 was 15.3, but it now appears to be holding. Many females in their late twenties and early thirties are beginning to bear the children they delayed bearing at an earlier age.[4] These workers are continuing to hold jobs after the birth of a child, whereas in the past females had a greater tendency to stop working when they had children or married.[5]

TABLE I

Women in the Labor Force

1900-1979

United States

Year	Women in the Labor force (thousands)	Women in the labor force as a percent of:	
		Total labor force	All women of working age
1900	4,999	18.1	20.0
1910	8,076	21.2	23.4
1920	8,229	20.4	22.7
1930	10,396	21.9	23.6
1940	13,007	24.6	25.8
1945	19,304	29.2	35.8
1950	18,412	28.8	33.9
1955	20,584	30.2	35.7
1960	23,272	32.3	37.8
1965	26,232	34.0	39.3
1970	31,560	36.7	43.4
1971	32,132	37.0	43.4
1972	33,320	37.4	43.9
1973	34,561	38.0	44.7
1974	35,892	38.5	45.7
1975	37,087	39.1	46.4
1976	38,520	39.7	47.4
1977	40,067	40.3	48.5
1978	42,002	41.0	50.1
1979, (Jan.-June average)	43,094	41.2	50.8

Source: "Women in the Labor Force: Some Data Series," unpublished paper, Janet L. Norwood and Elizabeth Waldman, U.S. Department of Labor, Bureau of Labor Statistics, August, 1979.

The women's movement of the 1960s and 1970s may have contributed to increased female employment by making many females more aware of job opportunities. On the other hand, the reverse has been argued; that is, the increased entry of females in the labor force may have made them more aware of wage and job discrimination, and thus this awareness may have fed the women's movement of the last two decades.[6]

A myth exists that most females who work hold part-time jobs to earn pin money. This notion is simply not supported by the facts. In May of 1979, 75.0 percent of females working held full-time jobs. At the same time, 75.0 percent of unemployed females were looking for full-time jobs.[7]

Women usually work out of economic necessity. As noted in Table II, in March of 1978, 22,789,000 female workers were married with a husband present. However, a total of 18,181,000 female workers had never married, were widowed or divorced, or were married but the husband was absent. Figure I indicates that of those female workers married with a husband present in 1977, 12.0 percent of the husbands' 1976 earnings were under $7,000, 9.0 percent were between $7,000 and $9,999, 16.0 percent were between $10,000 and $14,999, and only 20.0 percent were $15,000 and over. Thus, of females employed, 80.0 percent were single, widowed, divorced, separated, or were married and living with a husband who earned less than $15,000, leaving only 20.0 percent of those employed being in the relatively secure position of being married to a husband who was present and earning $15,000 and over.

Although females are employed in a wide variety of jobs, most are employed in the traditional fields in which females were employed in the 1940s, 1950s, and 1960s. The largest occupational groups among females are clerical and service positions.[8] This is certainly one reason average salaries for females are considerably lower than are average salaries of male workers.

Salaries of females who are employed full-time are approximately 59 percent of those for full-time male workers. The fact that female workers are concentrated in lower paying occupations does not account for all the disparity in salaries, however. Within most job categories, male workers are paid higher wages than are the female workers. For example, males who are employed in clerical occupations, which are dominated by female workers, earn a higher average salary than do the females.[9]

The fact that so many employed females are married and that so many have minor children may also contribute to the disparity in wages between workers of the two sexes. Some analysts believe that many married females are very concerned about convenience of location or the flexibility of working hours and do not place as much emphasis on the position or salary as do male workers.[10] A 1973 survey shows that in looking for jobs, females looked for jobs nearer to home than did males seeking employment.[11]

It has also been postulated that females may not be as likely as male workers to accept a job with heavier responsibilities or a job which would require overtime work. Other analysts have postulated that many women lack the same degree of self-confidence exhibited by male workers in seeking opportunities for job advancement.[12]

The average female worker is as well educated as the average male worker, both having completed a median of 12.6 years of school.[13] As of March 1977, of workers above 24 years of age, women with one to three years of college

TABLE II

Changes in Female Civilian Labor Force by Marital Status
March 1970, 1977, 1978
United States

Numbers in thousands

Marital Status	Civilian Female Labor Force			Change from March 1970 to March 1978	
	March 1970	March 1977	March 1978	Number	Percent Distribution of Change
Total	31,233	39,374	40,971	9,738	58.2
Never married	6,965	9,470	10,222	3,257	19.5
Married, husband present	18,377	22,377	22,789	4,412	26.3
Married, husband absent	1,422	1,715	1,802	380	2.3
Widowed	2,542	2,251	2,269	-273	-1.6
Divorced	1,927	3,561	3,888	1,961	11.7

Note: Due to rounding, sums of individual items may not equal totals.

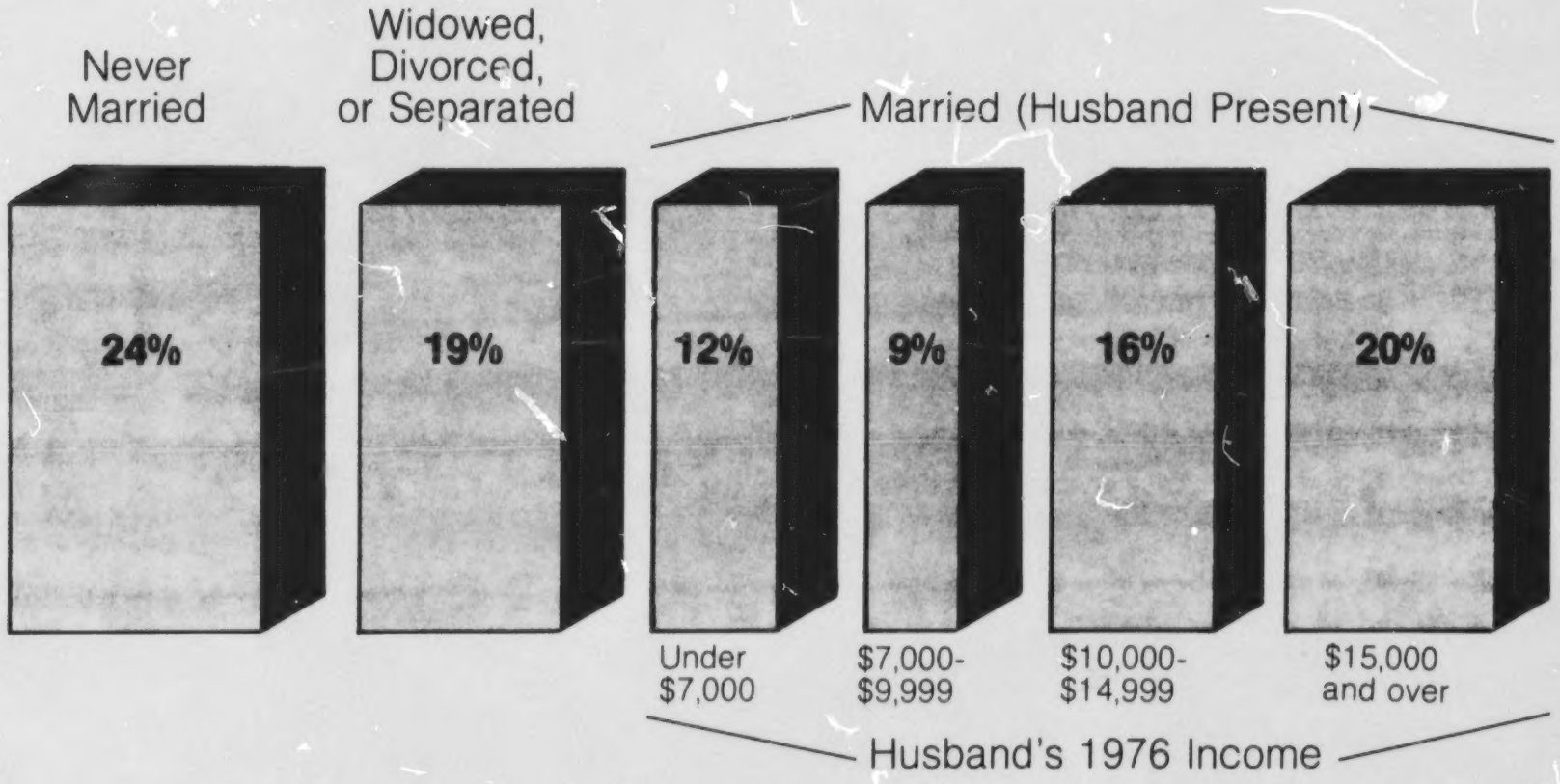
Source: U.S. Department of Labor, Bureau of Labor Statistics, July 1979.

FIGURE I

Women in the Labor Force, by Marital Status

March 1977

United States



Source: Prepared by the Women's Bureau, Office of the Secretary, from data published by the U.S. Department of Labor, Bureau of Labor Statistics, August 1978

earned an average of $738 more annually than did males with less than an eighth grade education. Females with four or more years of college earned an average of $474 less than male workers with an eighth grade education.[14]

Occupational Distribution

The increase in recent years of the employment of females has been accompanied by some change in occupational distribution. More females are concentrated in white collar jobs than previously. This is occurring partially because white collar jobs, which include clerical positions, have been increasing at a faster rate than employment as a whole.[15] During the 15-year period 1969 to 1974, employment in clerical positions increased 5.2 million, from 6.3 million to 11.5 million.[16] Major increases in the number of female employees also occurred in service jobs in the categories of teachers, nurses and health technicians, and social workers.[17]

The degree of concentration of female employees is decreasing overall. Females are beginning to enter fields of employment in which few females have been employed previously and they have made significant progress within the ranks of bank officers and financial managers, sales managers, postal workers, bartenders, and bus drivers.[18] The employment of female lawyers more than doubled during the 1960s, and the trend is continuing. Similar growth has taken place in medicine and dentistry. These trends can be expected to continue, as enrollment of females in law and medical schools is increasing.[19] During the 1960s, trends of growth began for female engineers and accountants, at more than four times the growth rate for males in these fields.[20]

Males are making inroads into such traditionally female-dominated jobs as those of elementary school teachers, typists, and telephone operators.[21] Table III lists the occupational distribution of female and of male employees for February 1979; Table IV lists the occupational distribution by sex for February 1979; Table V lists for 1950, 1960, 1970, and February of 1979, the occupational distribution of employed females within the categories of while collar, blue collar, service and farm, with a finer breakdown within each category.

As noted in Table III, in February of 1979, of the females employed, 64.9 percent were employed in white collar positions, which includes clerical work; 14.3 percent were employed in blue collar jobs; 19.9 percent were employed in service work; and .8 percent were farm workers.

The occupational distributions of females and males are quite different. As established by Table II, the two categories in which the largest percentage of women were employed were the categories of clerical and service (except private household). Of all females employed, 35.3 percent were clerical workers, as opposed to 6.2 percent of males who held clerical jobs, while 17.7 percent of employed women filled service (except private household) positions, as opposed to 8.5 percent of male employes filling these positions. Male workers were concentrated in crafts and operatives positions, with 21.4 percent of all males employed being in craft positions, and 17.7 percent being in operative positions. Of all females employed, only 1.8 percent were craft workers and 11.2 had operative positions.

TABLE III

Occupational Distribution of Female and of Male Employees

February 1979

United States

Occupational group	Females	Males
Total	100.0	100.0
White Collar	64.2	42.0
Professional-technical	16.6	15.7
Managerial-administrative, except farm	6.3	14.1
Sales	6.6	6.0
Clerical	35.3	6.2
Blue Collar	14.3	45.9
Craft	1.8	21.4
Operatives, including transport	11.2	17.7
Nonfarm laborers	1.3	6.8
Service	19.9	8.5
Service, except private household	17.1	8.5
Private household	2.8	(1)
Farm	0.8	3.6

(1) Less than 0.05

Note: Due to rounding, sums of individual items may not equal totals

Source: U.S. Department of Labor, Bureau of Labor Statistics, July 1979.

Table IV presents a comparison of the percentage of each job category which is filled by females as opposed to males. In February of 1979, females filled 62.9 percent of service positions, while males filled 37.1 percent. Within this category, females filled 97.8 percent of the service positions in the private households, with males filling only 2.2 percent of these positions. In other service positions, the difference is not so pronounced, with 59.4 percent of the positions being filled by females and 40.6 percent being filled by males.

Males hold most of the farm jobs: 85.5 percent, as opposed to 14.5 percent of these positions being filled by females.

In February of 1979, females held only 18.4 percent of the blue collar positions. Within this category, females were concentrated in operative positions, filling 31.4 percent of these jobs, but filling only 11.8 percent of the nonfarm labor positions and 5.8 percent of craft positions. Within the blue collar category, males were concentrated in crafts, holding 94.2 percent of these positions, and 88.2 of the nonfarm labor jobs.

The percentage distribution of male versus female positions is more nearly matched within the white collar category, with 52.7 percent filled by females and 47.3 percent filled by males. A slightly higher percentage of professional-technical positions are filled by males, 56.6 percent as opposed to 43.4 percent filled by females. Males dominate the managerial-administrative category almost three to one, filling 75.6 percent of these positions, as opposed to 24.4 percent of them being filled by females. Of sales positions, 44.2 percent are filled by females and 55.8 percent by males. Females fill the majority of clerical positions: 80.5 percent, as opposed to 19.5 percent male clerical workers.

Table V indicates that the gains from 1950 to 1979 in the total percentage of white collar positions filled by females was 11.5 percent, from 53.4 percent in 1950 to 64.9 percent in 1979. The greatest percentage increase of female workers from 1950 to 1979 in any category was to the clerical category, which accounts for a large percentage of the increase in females employed in the white collar positions. Clerical positions traditionally have been dominated by females and salaries are generally lower for this job category than for other white collar job categories.

One of the reasons for the large increase in clerical positions is that some job tasks which were formerly being completed by sales personnel are increasingly being performed by clerical workers. Additional clerical positions are also available in expanding data processing operations. Many of those who are classified as clerical workers are bookkeepers, bank tellers, office machine operators, receptionists, telephone operators, counter clerks, and teachers' aides.[22]

Still according to Table V, females advances 4.1 percent in professional-technical positions from 1950 to 1979, from 12.5 percent to 16.6 percent. Increases in female professional-technical workers can be attributed in part to changes in the job market in positions generally filled by females. Expanded health programs required additional nurses, therapists, dietitians, pharmacists, clinical laboratory technologists, and technicians. Business and government growth provided job opportunities for females as accountants and computer specialists. Social welfare and recreational program growth contributed to an increase in the number of female professional, social, and recreational workers.[23]

TABLE IV

Occupational Distribution by Sex

February 1979

United States

Occupational group	Females	Males	Total
White Collar	52.7	47.3	100.0
Professional-technical	43.4	56.6	
Managerial-administrative, except farm	24.4	75.6	
Sales	44.2	55.8	
Clerical	80.5	19.5	
Blue Collar	18.4	81.6	100.0
Craft	5.8	94.2	
Operatives, including transport	31.4	68.6	
Nonfarm laborers	11.8	88.2	
Service	62.9	37.1	100.0
Service, except private household	59.4	40.6	
Private household	97.8	2.2	
Farm	14.5	85.5	100.0

Note: Due to rounding, sums of individual terms may not equal totals.

Source: U.S. Department of Labor, Bureau of Labor Statistics, March 1979.

TABLE V

Occupational Distribution of Female Employees

1950, 1960, 1970, February 1979

United States

Occupational group	1950	1960	1970	1979
Total	100.0	100.0	100.0	100.0
White Collar	53.4	55.4	60.5	64.9
Professional-technical	12.5	12.4	14.5	16.6
Managerial-administrative, except farm	4.4	5.0	4.5	6.3
Sales	8.7	7.7	7.0	6.6
Clerical	27.8	30.3	34.5	35.3
Blue Collar	21.9	16.6	16.1	14.3
Craft	1.5	1.0	1.1	1.8
Operatives, including transport	19.6	15.2	14.5	11.2
Nonfarm laborers	0.8	0.4	0.5	1.3
Service	21.1	23.7	21.6	19.9
Service, except private household	12.4	14.8	16.5	17.1
Private household	8.7	8.9	5.1	2.8
Farm	3.6	4.4	1.8	0.8

Note: Due to rounding, sums of individual items may not equal totals.

Source: U.S. Department of Labor, Bureau of Labor Statistics, July 1979.

Although the percentage of females employed in the managerial-administrative category is increasing, many of these females are self-employed or are unpaid family workers. Many of the salaried workers are employed in the retail trade, especially in restaurants and cafeterias. Many operate such retail establishments as food stores, eating and drinking places, and apparel and accessory stores.

The percentage of sales positions filled by females decreased slightly, from 8.7 percent in 1950 to 6.6 percent in February of 1979. A large percentage of females who are in sales are sales clerks in retail stores. The employment of females as real estate agents and brokers, two sales categories traditionally dominated by males, is increasing.[24]

Although of females employed in 1950, 21.9 percent were employed in blue collar positions, the percentage dropped to 14.3 in 1979. During the decade of the 1960s, the females began moving into the skilled trades, or crafts, in large numbers and are continuing this increase at a higher rate than that for males in this area.[25] Most females who are operatives, or semi-skilled workers, are employed in factories. The largest groups for females within this category are sewer and stitcher, assembler, packer and wrapper, checker, and inspector.[26]

From 1950 to February of 1979, there was an overall decline in the percentage of females employed in service jobs. During that time, the percentage of females employed in private household service jobs fell 5.9 percent, while in other service positions, females increased 4.7 percent, from 12.4 percent to 17.1 percent. These positions in households are for domestic work, such as preparing and serving meals, cleaning, doing laundry, and caring for children. Few females are willing to work in private households, because of lower pay and benefits, and because of increased opportunities in other fields.

Service jobs other than private household comprise the second category of jobs traditionally filled by females, after clerical. These positions have increased in the areas of food, health, and personal services. Many of the food services positions are those of waitress, cook, and food counter and fountain workers. Of the health services occupations filled by females, a large number of them are nursing aide, orderly, attendant, practical nurse, health aide, and dental assistant. The largest groups in the personal services occupation category are hairdresser, cosmetologist, and cleaning service jobs.[27]

Income of Female Workers

Women who held full-time, year-round jobs in 1977 earned only 58.9 percent of the salary earned by men, down from 63.9 percent in 1955. (Table VI.) Women are over-represented among workers earning low salaries. Approximately the same percentage of male and of female workers earn $10,000 to $14,999. The remaining female workers are concentrated below this salary range, while male workers are concentrated in salary ranges $15,000 and higher. (Table VII.)

Two factors have been important in accounting for the earnings gap between workers of the two sexes. The first is that, despite recent employment gains for women, female workers are still concentrated in low-paying, traditionally female-dominated occupations. The second factor is that the

TABLE VI

Comparison of Median Earnings of Year-Round Full-Time Workers, by Sex, 1955-1977

(Persons 14 years of age and over)

United States

Year	Median Earnings		Earnings Gap in Dollars	Women's Earnings as a Percent of Men's
	Women	Men		
1977	$8,618	$14,626	$6,008	58.9
1976	8,099	13,455	5,356	60.2
1975	7,504	12,758	5,254	58.8
1974	6,772	11,835	5,063	57.2
1973	6,335	11,186	4,851	56.6
1972	5,903	10,202	4,299	57.9
1971	5,593	9,399	3,806	59.5
1970	5,323	8,966	3,643	59.4
1969	4,977	8,227	3,250	60.5
1968	4,457	7,664	3,207	58.2
1967	4,150	7,182	3,032	57.8
1966	3,973	6,848	2,875	58.0
1965	3,823	6,375	2,552	60.0
1964	3,690	6,195	2,505	59.6
1963	3,561	5,978	2,417	59.6
1962	3,446	5,974	2,528	59.5
1961	3,351	5,644	2,293	59.4
1960	3,293	5,417	2,124	60.8
1959	3,193	5,209	2,016	61.3
1958	3,102	4,927	1,825	63.0
1957	3,008	4,713	1,705	63.8
1956	2,827	4,466	1,639	63.3
1955	2,719	4,252	1,533	63.9

Notes: For 1967-77, data include wage and salary income earnings from self-employment; for 1955-66, data include wage and salary income only.

Source: U.S. Department of Commerce, Bureau of the Census: "Money Income of Families and Persons in the United States," Current Population Reports, 1957 to 1977, U.S. Department of Labor, Bureau of Labor Statistics: Handbook of Labor Statistics, 1977.

TABLE VII

Earnings Distribution of Year-Round Full-Time Workers, by Sex, 1977

(Persons 14 years of age and over)

United States

Earnings Group	Number (in thousands)		Distribution	
	Women	Men	Women	Men
Number and Distribution	19,238	39,263	100.0	100.0
Less than $3,000	713	1,026	3.7	2.6
$3,000 to $4,999	1,667	1,057	8.7	2.7
$5,000 to $6,999	3,810	2,356	19.8	6.0
$7,000 to $9,999	5,921	4,955	30.8	12.6
$10,000 to $14,999	5,234	10,883	27.3	27.7
$15,000 to $24,999	1,692	13,888	8.8	35.4
$25,000 and over	180	5,099	.9	13.0

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports, P-60, No. 118.

recent increase in labor force entry of women has resulted in large numbers of female employees being concentrated in and near entry level positions.[28]

Salary is the major source of income for women. Salaries are generally affected by such factors as the job skill requirements, the occupation, the company size, individual hiring policies, the absence or presence of a union, the geographic location, whether the job is full-time or part-time, and whether it is a year-round job. The woman's earning level is also greatly affected by her age, health, education, and attitude toward traditional job roles.[29]

Since the Equal Pay Act was passed in 1963, greater effort has been made to insure that the two sexes are paid equally for similar work. However, great discrepancies still exist. In the past, these pay differences have been blamed on differencee in job type, job preparation and continuity of work experiences.[30]

Career intermittency, especially of women with children, has been determined to be a major factor adversely affecting women's salaries. Women re-entering the job market are many times unprepared for changes in the job market and in skills required, job seniority has been lost, and employers may be less willing to hire and train young women if it is felt they will not stay in the job.[31]

The President's Manpower Report of April 1974 cites studies based upon work history data. In one study, adjustment for the difference in length of work experience for workers of both sexes in the same age and education groups reduced the wage-rate gap between married women and men by about 45.0 percent, still leaving a sizeable unexplained wage gap between the sexes. Another study matched continuously employed workers of both sexes and then matched them by age, occupation, education and work experience. The resulting gap was attributed by the researchers to sex discrimination.[32]

The possibility must be considered, however, that although women workers are as well educated as male workers there may be differences in kinds of education, training, and the counseling they have received, which may have directed them into traditional, low-paying jobs.[33]

"Data from the Equal Employment Opportunity Commission (EEOC) indicates that women experience unusual difficulty in getting hired and promoted into top career positions. Undoubtedly this is true in many instances and at various job levels." Thus, "discrimination in hiring, promotions, and pay scales continues to be a major obstacle to equality for women in the workplace."[34]

Table VI contains a comparison of median earnings of year-round, full-time workers by sex for the years 1955-1977. The earnings gap in dollars is also given, as are women's earnings as a percent of men's earnings. In 1955, women's median earnings were $2,719, or 63.9 percent of men's median earnings of $4,252. The earnings gap in dollars in the same year was $1,533. The earnings gap steadily increased to $2,552 in 1965, and to $6,008 in 1977. Women's earnings as a percent of men's followed a decreasing trend, from 64.9 percent in 1955 to 60.0 percent in 1965, and finally to 58.9 percent in 1977. It is conjectured that one reason for the decrease in women's earnings as a percent of men's is that many times salary increases are given as a percentage of current salary. Such action would, of course, widen the percentage gap between salaries for men and women, assuming that men had the higher salaries to begin with.

Table VII includes distribution of women and men working year-round, full-time. Note that although approximately the same percent of male and of female workers earn $10,000 to $14,999 (27.3 percent versus 27.7 percent), the workers are then concentrated above and below this category by sex. Sixty-three percent of women workers fall into lower earnings categories, as opposed to 23.9 percent of male workers earning less. On the other hand, only 9.7 percent of women workers earn higher than $14,999, while 48.4 percent of male workers earn more than $14,999.

Work Experience

Work experience has been considered part of the reason male workers earn more than female workers. Some analysts conclude that earnings are sharply affected by job experience, including the total number of years worked in a lifetime. Many female workers, especially in the past, have worked for several years and then withdrawn from the labor market to raise a family. When those women reenter the labor force their job skills are many times inadequate, both because tney have not worked for a number of years, and because the jobs have changed. Also, by withdrawing from the labor force for a number of years, female workers miss promotions awarded on the basis of seniority. Many women who have not prepared to work outside the home are now seeking employment and are usually employed in low-paying jobs because of lack of work experience.

The work experience factor is not to be discounted as one reason some female employees earn less than males, for the reasons just enumerated. However, it has been noted that even after workers of both sexes have been categorized according to several job-related background factors, female employees still earn less than male employees, even though the work experience and other important factors such as age and educational background are comparable.

Education

Educational background determines both the type of job a worker will hold and also the entry level of the worker. However, Table VIII illustrates that when earnings of male and female workers who have completed equal numbers of years of school are compared, the differences are remarkable. For example, in 1977 female workers who had completed four years of college earned $474 less than a male worker who had completed the eighth grade. Female high school graduates were shown to earn $525 less than males who had less than eight years of education. When salaries of male and female workers of equal educational levels are compared the differences are equally notable. A female completing less than eight years of school can expect to earn $6,074, which is $3,345 less than the male worker's income of $9,419. It is at this level that the actual dollar difference is the lowest.

The earnings of a woman who has completed eight years of school is $6,564, or $5,519 less than the $12,083 salary for male workers. It is at this level that women workers are paid the lowest percent of the salary paid to male workers--54.3 percent. As a woman completes additional levels of education past the eighth grade her salary increases as a percent of men's salaries, with the exception of the completion of four years of college. At this

TABLE VIII

Comparison of Median Income of Year-Round Full-Time Workers, by Educational Attainment and Sex, 1977

(Persons 25 years of age and over)

United States

Years of School Completed	Median Income		Income Gap in Dollars	Women's Income as a Percent of Men's	Marginal Dollar Value of Increased Educational Attainment	
	Women (1)	Men (2)	(3)	(4)	Women (5)	Men (6)
Elementary School						
Less than 8 years	$ 6,074	$ 9,419	$3,345	64.5	-	-
8 years	6,564	12,083	5,519	54.3	$490	$2,664
High school						
1 to 3 years	7,387	13,120	5,733	56.3	823	1,037
4 years	8,894	15,434	6,540	57.6	1,507	2,314
College						
1 to 3 years	10,157	16,235	6,078	62.6	1,263	801
4 years	11,609	19,603	7,998	59.2	1,448	3,368
5 years or more	14,338	21,941	7,603	65.3	2,733	2,338

Notes: Column 3 = column 2 minus column 1
Column 4 = column 1 divided by column 2

Columns 5 and 6 = absolute (median) dollar difference between successive years of school completed

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports P-60, No. 118

educational level, women are paid $11,609, or $7,998 less than men's salary of $19,603. At this point women earn 59.2 percent of the salary paid to male workers. As noted, this category is the exception in the increase of women's income expressed as a percent of men's, up from the low of 54.3 percent at the completion of eight years of school.

Table VIII also includes the dollar value of increased education for workers of each sex. The only two educational achievements which pay more to female than male workers in dollar amount are the completion of one to three years of college and the completion of five years or more of college. By completing one to three years of college a woman can increase her income $1,263, which is $462 more than the $801 increase gained by the male worker. By completing five or more years of college, as opposed to four years, a woman can expect to increase her salary $2,733, or $395 more than the $2,338 increase for a male worker.

The greatest dollar gap in actual earnings is in the category of completion of four years of college. While males earn $3,368 more by reaching this designation, compared to $1,448 additional salary for the female workers, the actual dollar gap in salary is $7,998.

The greatest difference in value of increased educational attainment is at the level of completion of eight years of school. By completing the eighth grade, women increase their salaries $490, or $2,174 less than the $2,664 increase of males completing the same grade.

The salary difference between male and female workers based on education may be decreasing, at least at entry level positions, as illustrated by Table IX. The 1976 survey reflected in this table shows that women entering the job market after graduation from college in 1976 would receive higher beginning salary offers in nine of the nineteen career fields listed. As recently as 1970, similar surveys indicated that beginning salary offers were lower for women in all fields, ranging from $1,032 less for women in accounting to $216 less for women in economics and finance.

Age

Although a full-time year-round female worker in 1977 earned approximately 59 percent of the salary earned by a male worker, Table X illustrates that this percentage varied from a high of 94.2 percent for the 14 to 19 age category to a low of 52.9 percent for the 45 to 49 age category. It is within this latter age category that men's income peaks, while women's income peaks at a much earlier age--30 to 34 years. Some researchers have concluded that women's careers peak so early because of lack of labor force mobility and the fact that many women are employed in dead-end careers. By contrast, the salaries of males continue to climb after the 30 to 34 age category, reaching a peak at 45 to 49 years of age.[35]

Marital Status

Table XI contains income data for each sex by marital status. In the age category 25 to 64 years, women workers had the highest income if they were divorced or single, while male workers earned more if they were married with a spouse present or were widowed.

TABLE IX

Average Annual Salary Offers,
Bachelor's Degree Candidates,
by Curriculum and Sex, 1976

United States

Curriculum	Women	Men
Business		
Accounting	$12,252	$12,204
General Business	10,320	10,512
Marketing	9,768	10,236
Humanities and Social Sciences		
Humanities	8,916	9,792
Social Sciences	9,240	10,392
Engineering		
Aeronautical	14,136	13,824
Chemical	15,396	15,336
Civil	13,836	13,248
Electrical	14,100	13,848
Industrial	13,968	13,644
Mechanical	14,712	14,340
Metallurgical	14,520	14,544
Science		
Agricultural	9,912	10,272
Biological	9,540	9,840
Chemistry	12,624	12,132
Computer Science	12,540	12,420
Health Professions	9,900	10,596
Mathematics	11,784	11,904
Other Physical and Earth Sciences	12,516	12,636

Source: National Science Foundation, Women and Minorities in Science and Engineering, 1977

Income by Occupation

Even when women have worked in the same occupations as male workers, their pay has traditionally been lower. Table XII contains detailed salary data comparing salaries of year-round, full-time workers of both sexes by occupation group. The overall median salary is $8,618 for women, which is approximately 59 percent of the median salary for men, $14,626. The salaries of women expressed as a percent of men's salaries range from a low of 25.5 percent for farm workers to a high of 90.5 percent for the health workers category (exclusive of physicians, dentists and related practitioners). In the major occupation categories, in 1977 female workers earned the following percentage of the salary of male workers: professional and technical workers, 65.8 percent; managers and administrators, 54.2 percent; sales workers, 42.5 percent; clerical workers, 61.6 percent; craft and kindred workers, 61.3 percent; transport equipment operatives, 58.3 percent; nonfarm laborers, 68.7 percent; service workers (except private household), 59.1 percent; and farm workers, 25.5 percent.

It is particularly noteworthy that female workers even earn a great deal less than male workers in categories dominated by women. For example, as noted in Tables IV and V, in February 1979, of females employed, the largest concentration, 35.3 percent, was in the clerical category and this category was 80.5 percent female. Even under these circumstances, the Table XII figures available for 1977 show that women clerical workers earned only 61.6 percent of the salary earned by male workers.

Table XIII contains preliminary earnings data assembled by the U.S. Department of Labor, listing median weekly earnings of each sex by occupation, and then stating the percentage that women's earnings are of men's earnings. It is noteworthy that women's earnings are given as 62 percent of men's earnings, which is an increase of approximately three percent since 1977.

A comparison of the preliminary 1979 data of Table XIII with the major categories of the 1977 data in Table XII indicates that women have made gains in all major categories. There is an approximate one percent increase in women's earnings as a percent of men's salaries in the categories of clerical and craft. The other increases vary, with a range up to a 12 percent increase in the category of transport equipment operatives, with a jump to a 56 percent increase in farm jobs.

A further analysis of Table XIII shows that women now earn from a low of 52 percent of the male salary in sales, to a high of 82 percent in farm work.

Some of the salary differences between female and male workers within the same category result from position differences within the category. For example, in sales, a large proportion of women are employed in retail stores, while men tend to sell cars, machinery and insurance. In the professional-technical area, proportionately more women than men are in the lower paying occupations within the group.[36] Within this group men are more likely to be doctors, lawyers, judges, engineers, college educators, or architects, while women are more likely to be elementary and secondary school teachers, nurses, librarians, dietitians, and health technologists.[37] Even in factory jobs, women are concentrated in such industries as clothing or electrical equipment, where wages are lower than in many types of factories.[38]

TABLE X

Annual Median Income in 1977 of Year-Round
Full-Time Workers, by Age and Sex

United States

Age	Income		Women's Income As a Percent of Men's
	Women	Men	
Total	$8,814	$15,070	58.5
14 to 19 years	5,632	6,042	93.2
20 to 24 years	7,497	9,800	76.5
25 to 34 years	9,543	14,129	67.5
25 to 29 years	9,485	12,866	73.7
30 to 34 years	9,629	15,447	62.3
35 to 44 years	9,282	16,863	55.0
35 to 39 years	9,488	16,703	56.0
40 to 44 years	9.049	17,064	53.0
45 to 54 years	9,142	17,029	53.7
45 to 49 years	9,179	17,347	52.9
50 to 54 years	9,098	16,723	54.4
55 to 64 years	8,846	15,669	56.5
55 to 59 years	8,990	15,981	56.3
60 to 64 years	8,556	15,200	56.3
65 to 69 years	8,922	14,536	55.8
70 years and over	7,257	11,722	61.9

As of March 1978

Source: U.S. Department of Commerce, Bureau of the Census, Current Population Reports, P-60, No. 118

TABLE XI

Median Income in 1977 of Year-Round Full-Time Workers,
by Sex, Age and Marital Status

United States

Sex and Age	Total	Single	Married		Widowed	Divorced
			Spouse Present	Spouse Absent		
Female						
18 years and over	$8,819	$ 8,575	$8,644	$8,501	$9,291	$10,156
18 to 24 years	7,254	7,046	7,435	7,402	(1)	7,873
25 to 64 years	9,280	10,225	8,839	8,739	9,409	10,309
65 years and over	7,838	(1)	6,826	(1)	8,382	(1)
Male						
18 years and over	15,082	10,117	15,942	11,835	14,820	13,360
18 to 24 years	9,301	8,217	10,582	9,666	(1)	10,443
25 to 64 years	15,748	12,126	16,316	12,187	15,276	13,550
65 years and over	13,815	(1)	14,866	(1)	(1)	(1)

(1) Base less than 75,000

Source: U.S. Department of Commerce, Bureau of the Census, Current Population Reprorts, P-60, No. 118.

TABLE XII

Median Earnings of Year-Round Full-Time Civilian Workers
by Occupation Group and Sex, 1977

(Persons 14 Years of Age and Over)
United States

Occupational group	Women	Men	Dollar Gap	Women's Earnings as a Percent of Men's
Total	$8,618	$14,626	$ 6,008	58.9
Professional and technical workers	11,995	18,224	6,229	65.8
Accountants	11,155	17,312	6,157	64.4
Computer specialists	15,135	18,849	3,714	80.3
Health workers (except physicians, dentists, and related practitioners)	12,093	13,360	1,267	90.5
Teachers	11,970	15,790	3,820	75.8
College and university	15,172	20,337	5,165	74.6
Elementary and secondary	11,732	15,029	3,297	78.1
Engineering and science technicians	11,566	15,147	3,581	76.4
Managers and administrators	9,799	18,086	8,287	54.2
Salaried	10,272	19,023	8,751	54.0
Manufacturing	11,277	22,523	11,246	50.1
Retail trade	8,437	15,076	6,639	56.0
Finance, insurance, and real estate	10,684	19,696	9,012	54.2
Public administration	12,568	18,673	6,105	67.3
Other industries	10,839	20,220	9,381	53.6
Self-employed	4,258	12,428	8,170	34.3
Retail trade	4,732	10,554	5,822	44.8
Sales workers	6,825	16,067	9,242	42.5
Insurance, real estate, and stock agents and brokers	11,020	18,907	7,887	58.3
Retail trade	5,529	11,110	5,581	49.8
Sales clerks	5,413	10,114	4,701	53.5
Clerical workers	8,601	13,966	5,365	61.6
Bookkeepers	8,516	13,520	5,004	63.0
Cashiers and counter clerks (except food)	6,632	10,139	3,507	65.4
Office machinery operators	9,019	13,076	4,057	69.0
Craft and kindred workers	8,902	14,517	5,615	61.3
Blue-collar worker supervisor	9,138	16,202	7,064	56.4
Operatives, including transport	7,350	12,612	5,262	58.3
Manufacturing	7,479	12,644	5,165	59.2
Durable goods	8,305	12,648	4,343	65.7
Nondurable goods	6,736	12,631	5,895	53.3
Nonmanufacturing	6,401	12,536	6,135	51.1
Operatives (except transport)	7,342	12,384	5,042	59.3
Laborers (except farm)	7,441	10,824	3,383	68.7
Manufacturing	7,533	12,061	4,528	64.5
Service workers (except private household)	6,108	10,332	4,224	59.1
Cleaning service workers	6,353	9,201	2,848	69.0
Food service workers	5,255	7,332	2,077	71.7
Health service workers	7,050	8,643	1,593	81.6
Personal service workers	6,097	9,553	3,456	63.8
Farm workers	1,635	6,412	4,777	25.5

Source: U.S. Department of Commerce, Bureau of the Census, Current Population Reports, P-60, No. 118.

TABLE XIII

Median Usual Weekly Earnings of Full-Time Wage and Salary Workers by Sex and Occupation, Second Quarter, 1979 (Preliminary)

United States

Occupation	Women	Men	Women's Earnings As Percent of Men's
Total	$183	$295	62
Professional-technical	261	375	70
Managerial-administrative, except farm	232	386	60
Sales	154	297	52
Clerical	180	287	63
Craft	189	305	62
Operatives, except transport	156	257	61
Transport equipment operatives	194	277	70
Nonfarm laborers	166	220	75
Service	138	203	68
Farm	125	153	82

Source: Bureau of Labor Statistics, U.S. Department of Labor, July 1979

Government Workers

Table XIV lists the median annual salaries by sex of all government workers, as well as a breakdown of federal, state and local government workers. Also included is women's earnings as a percent of men's earnings. When compared to the salaries of male government workers, the salaries of female workers fare best at the state and local levels. Women working at these levels earn 73 percent as much as men in the same category of work, compared to 67 percent at the federal level.

Women Workers in Kentucky

Current data concerning female workers in Kentucky is limited. The major data source, the United States Bureau of the Census, produces complete sets of data relative to the salaries, occupational distribution, education, marital status, and participation in the labor force every ten years, based upon its decennial census. During the decade of the 70s the Bureau conducted extensive surveys to update a portion of this data.

Surveys were conducted in the spring of 1876, which established data based on 1975. This new data includes statistics on the income of male and female workers, broken down for each state by age, education, work experience, and occupation. The section which follows is based upon data from the 1976 survey.

Occupational Distribution

Table XV lists the occupational distribution of female and of male employees for 1975 in Kentucky and Table XVI lists the occupational distribution by sex for 1975 in Kentucky.

As noted in Table XV, in 1975, of the females employed in Kentucky, 53.0 percent were employed in while collar positions, which includes clerical work; 13.9 percent were employed in blue collar jobs; 32.2 percent were employed in service work; and 0.8 percent were farm workers.

The occupational distributions of females and males within the state are quite different. As established by Table XV, the two categories in which the largest percentage of women were employed were the categories of clerical and service. Of all females employed, 27.0 percent were clerical workers, as opposed to 4.6 percent of males who held clerical jobs, while 32.2 percent of employed Kentucky women filled service positions, as opposed to 8.3 percent of male employees filling these positions. Male workers were concentrated in crafts and operative positions, with 20.6 percent of all males employed being in craft positions, and 21.3 percent being in operative positions. Only 10.6 percent of females were employed in operative positions.

Table III presents data for the United States similar to the data included in Table XV for Kentucky. Compared with the United States as a whole, Kentucky women are generally concentrated more in service jobs and less in white collar positions, while males in Kentucky are also concentrated less in white collar jobs but more in blue collar and farm laborer jobs.

TABLE XIV

Median Earnings in 1977 of Year-Round Full-Time Government
Wage and Salary Workers by Sex
(Persons 14 years of age and over)

United States

Class and Occupation	Women	Men	Women's Earnings As Percent of Men's
All Government wage and salary workers	10,342	15,182	.68
Public administration workers	10,327	16,051	.64
Professional services	10,425	14,708	.71
All other workers	8,967	12,658	.71
Federal government	11,508	17,118	.67
Public administration workers	12,001	17,314	.69
Professional services	11,411	16,154	.71
All other workers	8,886	15,835	.56
State and local government	10,161	13,951	.73
Public administration workers	9,058	14,679	.62
Professional services	10,390	14,605	.71
All other workers	9,085	12,148	.75

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports. P-60. No. 118

TABLE XV

Occupational Distribution of Female and of Male Employees

Kentucky

1975

Occupational group	Females	Males
Total	100.0	100.0
White Collar	53.0	31.0
Professional-technical	14.1	10.6
Managerial-administrative, except farm	6.0	10.4
Sales	5.9	5.2
Clerical	27.0	4.6
Blue Collar	13.9	50.9
Craft	(1)	20.6
Operatives, including transport	10.6	21.3
Nonfarm laborers	(1)	8.9
Service	32.2	8.3
Farm	0.8	10.0

(1) Not available
Note: Due to rounding, sums of individual items may not equal totals

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports,P-60, No. 112

Table XVI presents a comparison of the percentage of each job category which is filled by females as opposed to males. In 1975 females filled 71.5 percent of service positions, while males filled 28.5 percent. Males hold most of the Kentucky farm jobs: 92.6 percent, as opposed to 7.4 percent of these positions being filled by females. In 1975 females held only 15.6 percent of the blue collar positions. Within this category, females were concentrated in operative positions, filling 26.4 percent of these jobs, but filling only 3.3 percent of the nonfarm labor positions and 6.5 percent of craft positions. Within the blue collar category, of which Kentucky males held 84.4 percent of the positions, males were concentrated in nonfarm labor and crafts, holding 96.7 and 93.5 percent, respectively, of these positions.

The percentage distribution of male versus female positions is more nearly matched within the while collar category, with 46.4 percent filled by females and 53.6 percent filled by males. A slightly higher percentage of professional-technical positions are filled by males - 52.3 percent, as opposed to 47.7 percent filled by females. Males dominate the managerial-administrative category almost three to one, filling 73.6 percent of these positions, as opposed to 26.4 percent of them being filled by females. Of sales positions, 41.5 percent are filled by females and 58.5 percent by males. Females fill the majority of clerical positions - 79.9 percent, as opposed to 20.1 percent male clerical workers.

Table IV includes data for the United States similar to the data included in Table XVI for Kentucky. With the exception of a reversal in white collar positions, the same categories are dominated by the same sex on the state as on the national level.

Income of Female Workers

Table XVII contains a comparison by sex of median earnings of workers for 1975 in Kentucky. The earnings gap in dollars is also given, as are women's earnings as a percent of men's earnings. Kentucky women's median earnings were $3,060, or 44.1 percent of men's median earnings ($6,932). The earnings gap in dollars was $3,872.

Table VI presents data for the entire country similar to the data contained in Table XVII for Kentucky. Women's earnings expressed as a percent of men's has not fallen below 56.6 percent in the entire country since 1955 and was 60.2 percent in 1976 and 58.9 percent in 1977. This compares to 44.1 percent in Kentucky in 1975.

Table XVIII includes the earnings distribution by sex in Kentucky for 1975. Female workers are concentrated in the two income ranges below $4,000, while the two categories of greatest concentration of male workers are in the $6,000 to $9,999 and $10,000 to $14,999 ranges. Male workers are more concentrated in the higher categories, $15,000 to $24,999 and $25,000 and over, than are female workers. Seventeen and five-tenths percent of male workers are concentrated in these two higher categories, as opposed to 1.1 percent of female workers.

Table VII includes data for the entire country similar to that included in Table XVIII for Kentucky.

TABLE XVI

Occupational Distribution by Sex

Kentucky

1975

Occupational group	Females	Males	Total
White Collar	46.4	53.6	100.0
Professional-technical	47.7	52.3	
Managerial-administrative, except farm	26.4	73.6	
Sales	41.5	58.5	
Clerical	79.9	20.1	
Blue Collar	15.6	84.4	100.0
Craft	6.5	93.5	
Operatives, including transport	26.4	73.6	
Nonfarm laborers	3.3	96.7	
Service	71.5	28.5	100.0
Farm	7.4	92.6	100.0

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports, P-20, No. 334.

TABLE XVII

Comparison of Median Earnings by Sex

Kentucky

1975

(Persons 14 years of age and over)

Year	Median Earnings		Earnings Gap in Dollars	Women's Earnings as a Percent of Men's
	Women (1)	Men (2)	(3)	(4)
1975	$3,060	$6,932	$3,872	44.1

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports, P-60, No. 112.

TABLE XVIII

Earnings Distribution by Sex, 1975

Kentucky

(Persons 14 years of age and over)

Earnings Group	Number (in thousands)		Distribution	
	Women	Men	Women	Men
Number and Distribution	908	1,115	100.0	100.0
Less than $2,000	326	177	35.9	15.9
$2,000 to $3,999	212	184	23.3	16.5
$4,000 to $5,999	144	137	15.9	12.3
$6,000 to $9,999	159	219	17.5	19.6
$10,000 to $14,999	56	203	6.2	18.2
$15,000 to $24,999	8	152	0.9	13.6
$25,000 and over	2	43	0.2	3.9

Note: Due to extensive rounding, sums of individual items may not equal totals

Source: U. S. Department of Commerce, Bureau of the Census: Current Population Reports,P-60, No. 112

Education

Table XIX shows remarkable differences between earnings of male and female workers who have completed equal numbers of years of school. For example, in 1975 Kentucky female workers who had completed four years of college earned $2,629 less than a male worker who had completed four years of high school. Female high school graduates were shown to earn $1,127 less than males who had eight years of education. When salaries of male and female workers of equal educational levels are compared, the differences are equally notable. A female completing less than eight years of school can expect to earn $2,554, which is $2,898 less than the corresponding male worker's income of $5,452. It is at this level, however, that the actual dollar difference is the lowest.

The average earning of a woman who has completed four years of high school is $4,325, or $6,868 less than the $11, 193 salary for male workers. It is at this level that women workers are paid the lowest percent of the salary paid to male workers--38.6 percent. Among college graduates, Kentucky women earn 56.7 percent as much as male graduates.

Table VIII includes data for the country as a whole similar to the data included in Table XIX for Kentucky. At every educational level, women's income expressed as a percent of men's in Kentucky is lower than the national percentages of Table VIII.

Age

Although a Kentucky female worker in 1975 earned approximately 44 percent of the salary earned by a male worker, Table XX illustrates that this percentage varied from a high of 60.0 percent for the 14 to 24 age category, to a low of 36.1 percent for the 35 to 44 age category. Table X contains similar data for the workforce of the entire country.

Income by Occupation

Table XXI contains earnings data listing median earnings of each sex by occupation, and then stating the percentage that women's earnings are of men's earnings. Limited Kentucky data is available, and thus comprehensive comparisons cannot be made. The available data indicates that women fare worst in service and clerical occupations when their salaries are compared to the salaries of male workers in those same occupations. Women in these occupations earn only 50.5 percent and 50.6 percent, respectively, of the salary paid to male workers. Women who are employed as operatives and as professional-technical workers earn 64.8 percent and 69.4 percent, respectively, as much as do male workers in the same job categories.

Table XIII includes for the workforce of the United States data similar to that included in Table XXI for Kentucky. The percentage comparisons which are available for Kentucky are very similar to the Table XIII data for the professional-technical and operatives categories. Greater differences exist in the clerical and service categories, with Kentucky women dropping approximately 12 and 17 percentage points, respectively, below women's earnings as a percent of men's earnings for the nation.

TABLE XIX

Comparison of Median Income
by Educational Attainment and Sex, 1975

Kentucky

(Persons 25 years of age and over)

Years of School Completed	Median Income		Income Gap in Dollars	Women's Income as a Percent of Men's
	Women	Men		
Elementary School 8 years	$2,554	$ 5,452	$2,898	46.8
High School 4 years	$4,325	$11,193	$6,868	38.6
College 4 years or more	$8,564	$15,103	$6,539	56.7

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports, P-60, No. 112.

TABLE XX

Annual Median Income in 1975 of Workers by Age and Sex

Kentucky

Age	Income		Women's Income As a Percent of Men's
	Women	Men	
Total	$3,060	$6,932	44.1
14 to 24 years	1,561	2,600	60.0
25 to 34 years	5,384	10,021	53.7
35 to 44 years	4,366	12,097	36.1
45 to 54 years	3,973	9,905	40.1
55 to 64 years	4,002	8,090	49.5
65 years and over	2,322	4,290	54.1

Source: U.S. Department of Commerce, Bureau of the Census, Current Population Reports, P-60, No. 112

TABLE XXI

Median Earnings of Workers
by Sex and Occupation, 1975

Kentucky

Occupation	Women	Men	Women's Earnings As Percent of Men's
Total	$3,060	$ 6,932	44.1
Professional-technical	8,210	$11,831	69.4
Managerial-administrative, except farm	(1)	$15,108	-
Sales	(1)	$ 9,367	-
Clerical	$5,182	$10,239	50.6
Crafts	(2)	$ 9,506	-
Operatives including transport	$4,715	$ 7,272	64.8
Nonfarm laborers	(2)	$ 4,347	-
Service	$1,573	$ 3,115	50.5
Farm	(1)	$ 1,983	-

(1) Base less than approximately .60 sample cases

(2) Not available

Source: U.S. Department of Commerce, Bureau of the Census: Current Population Reports, P-60, No. 112.

CHAPTER III

STEREOTYPES AND DISCRIMINATION

The obvious question which springs to mind upon even a cursory reading of the information set out in Chapter II is: Why? Why do women, who make up 50% of the U. S. population, and who are at least as well educated as men, fare so poorly in the job market? Why are women workers concentrated in low paying and low status jobs? Why do women earn only approximately 60% of what men earn? Why do women earn less than men even when doing the same jobs as men?

Many people will come forward with smug answers to these questions: "A woman's place is in the home"; "They don't want to work"; "Women only work for pin money so they don't really care that much about what they earn"; "Women are too emotional to get ahead"; and that old favorite, "Women just can't make it in the business world."

Stereotypes

Of course the above responses are not really answers at all, but instead are symptomatic of the actual problem, in that they are all based upon stereotyped views of women. Unfortunately, there exists in our society a stereotyped image of what a woman is and what she is capable of. This stereotype, as with all stereotypes, is an exaggerated generality which may or may not describe a woman. The danger with stereotyping a large group of persons is that once the stereotype becomes entrenched, the individual members of the stereotyped group tend to lose their identity. People assume that each member of the stereotyped group possesses all the attributes of that group and often fail to look any further to see if that person might possess any unique characteristics. "The result is that women . . . have their identities derived first as members of a group and only second, if at all, as unique persons."[39] When the attributes assigned to a stereotyped group are ones which society finds undesirable, the door is opened for discrimination against the members of that group. This is exactly what has happened to women in the job market. The pervasive stereotypical view of women is that they are gentle, weak, emotional, dependent, delicate, and modest. The insidious aspect of this stereotype is that, on the surface, the attributes assigned to women are not wholly unfavorable, but although "the image has some nice qualities . . . they are not the ones normally required for the kind of achievement to which society gives its highest social awards."[40]

Thus, it is irrelevant that the stereotypical attributes assigned to women are in many ways laudable ones, because by characterizing a person as "emotional, gentle, and modest" you close possible avenues of employment to them as effectively as if the stereotype were that "all women are dishonest." As mentioned earlier, by stereotyping a group of persons, one tends to view each member of that group as a stereotype first and as a unique individual second. Once a prospective employer evaluates a person on the basis of perceived abilities instead of actual abilities, he discriminates against that person. This is what has been happening to women in the job market. Employers have traditionally not attempted to evaluate a woman solely on the basis of her actual job-related characteristics, but have seen her only as a stereotype.

The attempt to dispel stereotypes is not an attempt to change women. There are many women who are happy and content to live in accordance with feminine stereotypes. The laws discussed in Chapter IV do not attempt to - nor do they - mandate that any woman stop being a wife and mother and seek a job on an assembly line. Those laws and, in a minor way, this study are attempting to change the popular misperceptions of women. The basis of civil rights legislation is the right of a person to be considered as a person, not just as a faceless member of a class. The law attempts to give a woman freedom of choice, by permitting her access to all walks of life. It is a foregone conclusion that if a woman wants to be a housewife she should be able to do that and have people respect her right to do so, but equally, if she wants to work she should have the right to earn her job on the basis of her own merits. Nor do these laws force an employer to hire a woman just because she is a woman; equal employment laws merely attempt to strip the blinders from the eyes of employers, so that they can see women as individuals and not as stereotypes.

Discrimination

Discrimination caused by stereotyping takes many forms. Generally, in the area of employment, women have run into three forms of discrimination: labor laws applied to women only, overt discrimination, and covert (sometimes referred to as institutional) discrimination.

Labor laws applied to women only

Almost every state enacted, in the late 19th and early 20th century, labor laws which applied only to women. The laws were termed "protective," in that ostensibly they were enacted to shield women from the harshness of the work place. In actual effect, the laws discriminated against women by prohibiting their employment in some jobs and by requiring employers to make special allowances for women in many other jobs. These laws made employers reluctant to hire women because of the special considerations required. In essence, the laws made it more expensive to hire a women for a job than a man.

The following commentary demonstrates the flaws in such "protective laws":

> Recent research into the origins of these law reveals that they were based on stereotypes about women's transient and secondary role in the labor market and their weak physical condition as well as on the desire of male workers to reduce competition for higher paying jobs. The value of the laws is also questionable because they are characterized by uneven coverage, wide variation from state to state, and, ironically, exemptions for situations in which protection would seem most appropriate. For example, domestic workers and workers in canneries and other businesses involved in seasonal food production are often exempt from the hours and night-work laws. These exemptions are not based on the ability of these workers to obtain decent conditions for themselves but on the convenience for employers having workers available for long hours. Moreover, the exclusion of men from coverage under the small number of truly beneficial laws is discriminatory.[41]

Protective labor laws fall into three categories:

"(1) Laws excluding women from certain jobs;

(2) Laws regulating hours or conditions of work or prohibiting the lifting of weights over a certain limit; and

(3) Laws providing supposed benefits, such as minimum wages, rest periods or mealtimes."[42]

Generally, most state protective laws have now been seen for what they really do and have been repealed. Even those laws which have not been repealed have dubious validity in light of Title VII. Protective laws shall be discussed at length in Chapters IV and V.

Overt Discrimination

Overt discrimination is the most obvious and therefore the easiest form of discrimination to combat. Overt discrimination exists when an employer has a specific personnel policy which denies women equal employment opportunities. "Such policies may include establishment of different job qualifications for women and men performing identical or similar jobs, establishment of lower wage scales for women performing the same or similar functions as men, or advertising job openings for men or women only."[43]

Overt discrimination is an intentional act. The employer who overtly discriminates against women knowingly takes some action which adversely affects women because of their status as women. Overt discrimination is the result of a stereotype becoming so entrenched in the mind of an employer that he refuses to consider a woman on her individual merits.

Overt discrimination is the easiest to prohibit because it does require an intentional act which adversely affects a woman. As shall be seen in the next chapter, both federal and state law prohibit biased employment practices. The difficulty lies in enforcing those laws. All too often women are unaware of their rights and remedies under the law and therefore fail to bring any action against an employer who has failed to employ, promote or pay them equally.

Covert Discrimination

Covert discrimination, sometimes referred to as institutionalized discrimination, is the most insidious product of stereotyping. Covert discrimination operates unintentionally in that it represents subconscious attempts to validate internalized stereotypes. Covert discrimination is the Procrustean mechanism used by people to ensure that each member of the stereotyped group fits into the mold established. The vague feeling that a "woman shouldn't be doing that" often results in her actions being disapproved and perhaps disparaged, thereby making her a victim of covert discrimination.

> Discrimination may be overt in the sense that individuals are consciously accorded different treatments in specific cases because of attributes not associated with productivity. Institutional dis-

> crimination occurs when people are accorded different treatment because of attributes that are not associated with productivity and that result from the influence of social patterns of behavior, to which people have adopted.[44]

It should be obvious that covert discrimination is difficult to eradicate. It does not generally manifest itself in specific acts which can be prohibited, but instead is caused by attitudes held by large segments of the population which inhibit the freedom of choice of a particular group. The most pernicious aspect of covert discrimination is that the stereotype can become so pervasive as to be adopted by the members of the stereotyped group, so that they feel unworthy and unable to do a particular act themselves.

The following illustrates nicely the differing impacts of overt and covert discrimination upon a person seeking employment:

> In the overt case, for example, applicants for employment might be denied jobs because of their race, national origin, sex and so on. Whereas in the institutionalized case, applicants might not apply for jobs because of inadequate knowledge of them, a feeling that they would be discriminated against if they did apply or because segregated educational or training facilities had rendered them unqualified for the position even if overt discrimination were no longer practiced.[45]

Covert discrimination works against women in three ways. First, people holding stereotypes subconsciously disapprove of and disparage women who attempt to breakout of stereotypical roles. Second, women who have internalized stereotypes may feel unworthy to perform certain jobs. Third, because of stereotyped expectations of what women can do, they are often inadequately trained and educated, so that when they attempt to find jobs in non-traditional areas they find that they actually lack the requisite skills.

The following example will show the barriers thrown up by the various mechanisms of covert discrimination to a woman who attempts to be employed in a position which traditionally has been thought of as a "man's job." The woman in this example is Mary Jones, 25 years old, working in a large company as a secretary earning $3.20 an hour. She discovers that the company has a number of openings for carpenters, whom the company will train. During training, the carpenter-apprentices will make $5.60 an hour, and as full-fledged carpenters they will make over $9 an hour. For the purposes of this example, it is assumed that the company is an equal opportunity employer and there is no overt discrimination against Mary.

Mary is lucky, first of all, if she even finds out about the job. The company has only advertised the openings at the local trade school, which has no women students, and in the plant areas of the company. The women in the company all work in the offices, so most are unaware of such openings. Luckily, for Mary, she is secretary for the personnel director and thus she typed the job descriptions. The first act of covert discrimination in this case occurred, not against Mary, but against all other women in the community. The company thought it was being non-discriminatory, and in fact, was willing to hire women, but because of its method of advertising and because of past discrimination which had kept women out of the plant and the trade school, the company was discriminating against women by failing to inform them of all potential jobs.

Mary realizes that the carpentry job is very attractive and she certainly needs the extra money. She is afraid however to apply for the job. She is afraid she will be considered unfeminine or a "freak" if she seeks work as a carpenter. She is afraid that she just cannot do the job. She knows that carpenters in the plant do not really do terribly strenuous work; in fact, in any given day, her filing duties are probably more strenuous. Yet she feels that being a woman somehow makes her not as qualified for the job as a man. Mary thinks about the job and finally casts aside her doubts and applies for it. She triumphs over her feelings of inadequacy based on stereotypes of what women can do. She had at first been unwilling to rate her abilities as an individual, and was willing to accept as true the limitations society had placed on her. Only by a great effort was she able to push aside the feeling of innate inferiority and try for the job.

Unfortunately all too many women have so internalized the stereotyped images of what a woman should be, that they will never break out of the mold, and in fact, believe that they can never be the equal of men. The sad result of this type of covert discrimination was demonstrated dramatically in a classic experiment performed by Phillip Goldberg.

> He gave college girls sets of booklets containing six identical professional articles in traditional male, female and neutral fields. The articles were identical, but the names of the authors were not. For example, an article in one set would bear the name "John T. McKay" and in another set the same article would be authored by "Joan T. McKay." Questions at the end of each article asked the students to rate the articles on value, persuasiveness and profundity and the authors for writing style and competence. The male authors fared better in every field, even such "feminine" areas as Art History and Dietetics. Goldberg concluded that "women are prejudiced against female professionals and regardless of actual accomplishments of these professionals, will firmly refuse to recognize them as the equals of male colleagues.[46]

Once Mary decided to pursue the job as carpenter she let her intentions be known to her family and friends. They were appalled by her choice. They told her that such a job just was not fit for a woman, that it would be dirty and dangerous, would make her less attractive as a woman, and so on. Mary's family and friends were not intentionally trying to discriminate against her, but were trying, albeit misguidedly, to help her, but discriminating against her they were. They were covertly discriminating against Mary just to avoid disturbing their stereotypes. They were refusing to see Mary as an individual, but instead were viewing her merely as a member of a group. Remember, no one said that Mary could not do the job, just that a woman should not do such a job. Mary was now becoming determined to have the job. She brushed aside the protestations of her family and friends and went to the interview.

At the interview, the supervisor was nice and very supportive of Mary. Unfortunately, he told her, she did not meet the minimum qualifications for the job. The requirements were minimal, but they did require an applicant to have had two years of high school shop classes. Mary had not taken any shop classes in high school because she had not been permitted to. She remembered that she had tried to sign up for a woodworking class, but the counselor had refused to permit this because he had said that girls were to take home economics and boys were to take shop, and it would just cause too much disruption if she were to do it any other way. Anyway, he had asked her, what would she possibly do with what she would learn in the woodworking class?

In our story, however, Mary was lucky again - the company was willing to bring Mary into the apprenticeship program on the condition that she enroll in a shop class at night at the local vocational school. This situation illustrates, nonetheless, two forms of covert discrimination at work. First, it shows how early stereotypes begin to result in covert discrimination. When the counselor prevented Mary from enrolling in the woodworking class, he discriminated against her. He was acting upon his stereotyped ideas of how best to educate and prepare children for adulthood. By following the stereotyped view of what women should be, educators ensure that women will indeed fulfill the stereotyped expectations, since they have not been educated to do anything else.

The company requirement that applicants have had one year of shop classes also covertly discriminated against Mary. On its face, the requirement would seem to be job related and necessary, but when the requirement is considered with the knowledge that women have been refused access to high school shop classes, the discriminatory impact of the requirement becomes apparent. Unless the requirement is absolutely necessary for the job, it should be dropped. Other examples of such apparently sex-neutral requirements which, in fact, discriminate against women, are height and weight requirements and excessive lifting requirements.

Mary soon started her new job and quickly found that she had a natural flair and love for woodworking. It was not easy for her at first, because while her fellow apprentices, all men, did not explicitly discriminate against her, they tended to view her as a stereotype first and as Mary Jones second. At first the men took her presence on the job as a joke. When they finally realized that she was going to stay, Mary became the butt of crude jokes and lewd suggestions from a number of the men, who because they could not understand why she was there, just assumed she was there to meet men. Mary's professional manner soon ended the sexual harrassment, and the men began to treat her just as another worker, except that she was held to a higher standard than anyone else. If a man made a mistake, it was because he was learning, if Mary made a mistake, it was because she was a woman.

Mary found she had to work twice as hard and do twice as well just to be considered an equal of the men. This she did and she finally was accepted as a first-class carpenter. Mary's problem with getting the proper credit due her is the classic problem of a member of a stereotyped group. Those holding the stereotype expect the person to fail, so that their stereotyped expectations will be validated. To ensure the validation of that stereotype, they create a double standard, with much higher expectations for the member of the stereotyped group. In most cases the double standard is not consciously applied, but is merely the result of the stereotyped expectation that the person will fail.

The sexual harrassment encountered by Mary is one of the most demeaning forms of covert discrimination faced by women. Often, if a woman does not fit into men's stereotype of a "lady" - i.e., she works in a non-traditional job - men assume vaguely that she is immoral or "loose" and thus feel free to harrass her. In many instances, the harrasser is a superior of the woman so she is afraid to report him or sometimes to avoid his advances. All too often a woman faced with such a situation will merely quietly resign from the job, in order to avoid further harrassment, thus never getting the opportunity to prove herself in the job.

As was pointed out several times, Mary Jones was very lucky. She managed to surmount all the obstacles thrown up by covert discrimination. She did not have to contend with either legal or overt discrimination, and finally she was extraordinarily good at being a carpenter. Unfortunately, in the real world, most women are not so lucky. Discrimination in some form or another usually meets them at every turn away from the narrow path laid down by the female stereotype.

CHAPTER IV

THE LAW

Federal and state laws make it unlawful to discriminate against women in the area of employment. In the past two decades a panoply of laws has been enacted to ensure that women are able to enter the mainstream of American life and be assured of the opportunity to compete for jobs on an equal basis with men. Following is a brief survey of the most important of those laws.

Evolution of Women's Legal Rights

Historically, women have been afforded few protections under the law, and in fact, until recently, the law has been used as a device to relegate women to the kitchen and the nursery.

Lost forever in the mists of prehistory is the date of the shift from simple family and tribal matriarchates, which were ruled by women, to larger more complex social systems dominated by men. An aspect of that shift to a more complex system was the beginning of the rule of law to regulate life. Beginning as simple tribal taboos or superstitions, laws slowly grew more sophisticated and comprehensive as civilization blossomed. From those first primitive tribal taboos to the first law "codes," the men who made those laws made certain that women were relegated to an inferior place in society, where they were to remain until modern times.

In ancient Greece, that most revered cradle of democracy, women were denied the right of citizenship. Under Roman law women were kept as perpetual children under the legal principle known as the "Perpetual Tutelage of Women." A woman was deemed to be forever under the "hand" of a male and through her life was passed from one to another, her father, her husband, and in the case of a widow, even her oldest son. In almost all respects, women in Roman society occupied the same position as slaves, with one difference--slaves could be emancipated.

The lot of women was little changed for the next thousand years or so. The strictures of Roman law were relaxed to some extent and were incorporated into canon law, which, in turn, was incorporated into English common law. In 1765, Blackstone, in his famous treatise on the common law, Commentaries on the Laws of England, codified the common law by restating and, in effect, setting into concrete, the doctrine that "the husband and wife are one, and that one is the husband."[47]

Blackstone's Commentaries was written to be a textbook, but in America, where it was often the only law book, it became a "bible," thus ensuring that women would possess second class status in the New World. As late as 1845, Edward Mansfield could write of the legal position of women that

> it appears that the husband's control over the person of the wife is so complete that he can claim her society altogether; that he may reclaim her if she goes away or is detained by another; that he may use constraint upon her liberty to prevent her going away, or to prevent improper conduct. That he may maintain suit for inju-

> ries to her person; that she cannot sue alone; and that she cannot execute a deed or valid conveyance without the concurrence of her husband. In most respects she loses the power of personal independence and altogether that of separate action in legal matters.[48]

In addition, the husband had almost total control over all the wife's real and personal property and income. Admittedly, unmarried women did possess more rights, but this was small comfort in an age where women were "supposed to be married." Single women possessed more rights mainly because they were considered to exist outside the mainstream of society.

Up until the mid-nineteenth century, wealth consisted almost exclusively of property and the income therefrom. Correspondingly, laws against women consisted to a large extent of restrictions against their ownership and conveyance of property. However, with the onslaught of the industrial revolution, and the rise of the middle class, the basis of wealth for most people became income from employment. Women began to enter the job market in unprecedented numbers and compete with men for jobs. With the enactment of the Married Women's Property Act in the 19th century, most disabilities against women's ownership of property were removed, but, reflecting the shift from property to employment income based wealth, new laws were enacted in their place imposing limits upon women's rights to free employment, usually under the guise of "protective laws" designed to protect the "weaker sex." These laws prohibited women from working in certain fields of employment, regulated their employment in other areas and often required employers to grant them special concessions. Of course, the real effect of these laws was to close many high-paying jobs to women either because they were prohibited from doing some jobs, or because the special considerations which had to be granted women made it less practical or more expensive to employ women. So, the higher paying, technical jobs went to men, and women were pushed into a few low-paying and low-status jobs which came to be known as women's jobs.

Federal Law

In the early 1960's, movement toward the securing of equal rights for women finally began to gain momentum. It was soon realized, however, that the courts and the Constitution would be of little help to women. The Supreme Court had consistently taken the position, that, unlike race, sex was not a "suspect classification" and therefore the Constitution could not be used to prohibit discrimination against women.[49] In order to study the problem of sex bias, President Kennedy established the President's Commission on the Status of Women in 1961. That committee recognized and reported that the first step to ensure equal rights for women was the enactment of legislation to end bias against them in employment. In 1961, President Kennedy signed an Executive Order which directed all federal agencies to hire, promote and train employees without regard to sex.[50] In 1963, the Equal Pay Act[51] was passed by Congress, and in 1964, the major piece of sex discrimination law was enacted, Title VII of the Civil Rights Act of 1964.[52]

Title VII of the Civil Rights Act of 1964

The Civil Rights Act of 1964 was enacted largely as a measure to end racial discrimination in all aspects of American life. Title VII of the Act

is a blanket prohibition against employment bias. Almost as an afterthought (and some commentators believe as a joke by opponents of the bill), sex was included in the Act as a protected classification.

Title VII's guiding principle is that certain characteristics are irrelevant to the determination of whether or not a person is qualified for a job, and that to deny a person a job on the basis of those characteristics is illegal. Section 703 of Title VII sets out characteristics which are not to be considered by an employer:

> (a) It shall be an unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or nation origin.[53]

Parallel provisions also make discrimination by employment agencies and trade unions illegal.

Title VII contains a blanket prohibition with respect to sex discrimination, subject to one very narrowly drawn exception. If sex is a bona fide occupational qualification (BFOQ) for a position, it is not an unlawful employment practice to use it as a qualification. But, as shall be seen in Chapter V on unlawful employment practices, the BFOQ exception has been confined almost exclusively to such jobs as wet nurses or actresses.

An important amendment to Title VII was the Pregnancy Disability Amendment enacted in 1978.[54] This amendment was enacted by Congress in reaction to General Electric v. Gilbert.[55] In that case, the Supreme Court ruled that it was not illegal under Title VII to exclude disabilities caused by pregnancy from coverage under comprehensive employees health insurance plans. The Pregnancy Disability Amendment overturns Gilbert by requiring that, under employee disability plans, a disability caused by pregnancy must be treated the same as any other disability.

Coverage. Title VII applies to all employers who are engaged in an industry affecting interstate commerce and which have fifteen or more regular employees. Not covered are the United States Government or bona fide tax exempt private membership clubs. Since 1972, local governments have been subject to Title VII.

Also covered under Title VII are employment agencies which regularly procure employees, as well as labor organizations which either maintain hiring halls or which have fifteen or more members.

Equal Pay Act of 1963

The Equal Pay Act was the first major piece of legislation designed to end sex bias in employment. It was enacted as an amendment to the Fair Labor Standards Act of 1938 and was intended to prohibit the common practice of paying women less than men for doing the same work. The Act reads, in relevant part, as follows:

> No employer . . . shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishments at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs, the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions.[56]

A parallel provision makes it unlawful for any labor organization to cause an employer to violate the above.

Four exceptions to the Equal Pay Act permit employers to pay employees doing similar work at different rates, where such differential is the result of:

(1) a seniority system;

(2) a merit system;

(3) a system which measures earnings by quantity or quality of production; or

(4) a differential based on any factor other than sex.

The scope of such exceptions, as interpreted by the courts, shall be discussed further in Chapter V.

Coverage. The Equal Pay Act applies to all employers who are covered under the federal minimum wage law, i.e., all employers who employ two or more employees and who are engaged in interstate commerce or the production of goods for interstate commerce, as well as federal, state and local governments.

Miscellaneous Contractual

Title VII and the Equal Pay Act are mandatory requirements for all who fall within their coverage. The following laws are different, in that they apply only to employers who voluntarily establish a contractual relationship with the federal government. These laws require that when an employer elects to provide some service to the government, or in some cases, when some local government elects to receive some benefit from the federal government, that it guarantee and take certain steps to guarantee that it is an equal opportunity employer.

Executive Order 11246. This executive order, issued by President Johnson in 1968 and later amended, prohibits discrimination on the basis of race,

color, religion, sex and national origin, by any employer who has a contract with the federal government in excess of $10,000. Specifically, the order applies to all employers holding contracts or subcontracts with the federal government worth more than $10,000, or who provide services, material or construction work for the federal government worth more than $10,000[57] in a twelve-month period.

Intergovernmental Personnel Act of 1970. State or local governments who receive federal grants-in-aid under this Act to develop and implement merit systems are prohibited from discriminating on the basis of race, national origin, political or religious affiliation, age sex, or physical disability.[58]

National Apprenticeship Act of 1937. No state-registered apprenticeship program may discriminate in the recruitment, selection, employment, and training of apprentices on the basis of race, color, religion, national origin or sex.[59]

State and Local Fiscal Assistance Act. No government department, division, program or activity funded in whole or in part by federal general revenue sharing funds shall discriminate on the basis of sex.

Comprehensive Education and Training Act of 1973 (CETA). The CETA program provides money to local governments to provide job training and employment opportunities for certain disadvantaged persons. The Secretary of Labor administers the program and he is prohibited from providing CETA funds to any local program unless the grant contract or agreement specifically provides that the operation of the program will not discriminate against any program participant or applicant on the basis of race, color, creed, national origin, sex, political affiliation, or beliefs.[60]

Administration and Enforcement of Federal Law

Equal Employment Opportunity Commission

It was understood by the Congress that simply making discrimination illegal would not be sufficient to combat employment discrimination. People who are most likely to be discriminated against are those who will also be most unlikely to effectively bring action to secure their rights in a court of law. What was needed was an agency which would assist persons claiming discrimination in the assertion of their new rights under Title VII, and to serve as a vehicle for the assertion of those rights. Title VII therefore established the Equal Employment Opportunity Commission (EEOC) to be the chief enforcer of Title VII. Amendments in 1972 and President Carter's Reorganization in 1978 have given the agency broad powers to combat employment discrimination.

As created, the EEOC had responsibility for enforcing only the provisions of Title VII. Practically its only enforcement tools were the informal ones of conference, conciliation and persuasion. In 1972, Title VII was amended to give its enforcement efforts more teeth. Under those 1972 amendments, the EEOC can file suit in its name against employers and unions when conciliation efforts fail. Additionally, it received the ability to file "pattern and practice suits" against employers. Unlike some other federal enforcement agencies, the National Labor Relations Board, for instance, the EEOC possesses no ability to issue "cease and desist" orders against employers.

In addition to direct enforcement powers, the EEOC is given the authority to "issue, amend or rescind suitable procedural regulations to carry out the provisions of Title VII.[61] The regulations promulgated thereunder shall be discussed further in this chapter. The commission may also issue formal opinions on questions involving issues within its jurisdiction. The EEOC is empowered to require all employers subject to Title VII to make and keep records relevant to the determination of the existence of employment discrimination.

A major reorganization in 1978 expanded the EEOC's jurisdiction and powers by consolidating several employment discrimination programs which had been administered by other federal agencies within the EEOC. The purpose of the reorganization was to improve the enforcement effort by making the EEOC the focal point for standards, guidance and information on job bias. Prior to the reorganization the enforcement effort had been handled by eighteen separate agencies.

The major program which was transferred to the EEOC was enforcement of the Equal Pay Act, which formerly had been the responsibility of the Labor Department.

Organization. The EEOC is composed of five members serving five-year terms. Members are appointed on a staggered basis by the President, with the advice and consent of the Senate. The chair of the EEOC since 1977 is Eleanor Holmes Norton.

The staff of the agency is widely dispersed throughout the country, to facilitate the enforcement effort. In addition to the headquarters office in Washington, D.C., there are twenty-two district offices and numerous field offices.

The Washington office is the headquarters of the commission members, the general counsel and other administrative offices. The basic functions of the EEOC are carried out in the regional and field offices. "It is in these offices that charges are filed, investigated, decided and conciliated."[62]

Bringing a charge with the EEOC. Title VII, The Equal Pay Act and the other statutory provisions are the sole remedies for women who have been the victims of sex bias in employment. A woman who has been a victim of discrimination has recourse against a biased employer only through the pursuit of the remedies provided in those acts, because, contrary to the cases of the other protected classes, the courts have consistently failed to extend the protections of the federal constitution or the older civil rights statutes, such as 42 U.S.C. Section 1983 to women. This is extremely unfortunate, because the prerequisite to bringing a court action under Title VII is that the charging party (person alleging discrimination) must first have exhausted her administrative remedies within the EEOC. Because of the great number of cases before the EEOC it can take a very long time for a woman to pursue her case against as employer. The obvious problem of this system is that an employer can wait out that time far better than a woman who is unemployed because she is the victim of discrimination.

The first step in bringing an action under Title VII is to file a charge with the EEOC. The charge must be in writing, under oath, and must clearly state the date, place and circumstances of the alleged discriminatory act. There is a 180-day statute of limitation, beginning from the time the alleged violation took place, except that, where the charging party initially pursued

state remedies, the statute of limitation is 300 days, or 30 days after receiving notice of the termination of the state proceeding, whichever occurs first. When the charge is filed, the EEOC will then notify the respondent (employer, against whom discrimination is charged) within ten days. If the acts alleged by the charging party occurred in a state which has its own fair employment practices act (as does Kentucky), the EEOC will defer its jurisdiction to allow the appropriate state agency to resolve the complaint. If the state agency fails to resolve the dispute within 60 days, the complaint is returned to the EEOC. A state agency must qualify pursuant to Section 706 of Title VII in order to have charges deferred to it, in which case it is known as a "706 Agency." A state fair employment agency which does not qualify is known as a "notice agency" and is notified of the charges received by the EEOC, but is not actually deferred to. In Kentucky, the Commission on Human Rights, created pursuant to KRS Chapter 344, is a 706 Agency, as is the Lexington-Fayette Urban-County Human Rights Commission.

Once a charge is filed, or referred back to the EEOC from the local 706 Agency, the EEOC must investigate it if there is reasonable cause to believe the charge is true. The determination of "reasonable cause" shall be made promptly, (if feasible, within 120 days). In the determination of "reasonable cause" the EEOC must give substantial weight to the finding of the local 706 Agency, if any. If the EEOC determines that there is no reasonable cause, it shall dismiss the charge and notify the parties.

Much assistance is given to the charging party in these early stages. Generally, the charge will be prepared with the help of EEOC staff, by conducting an in-depth interview with the charging party. If the charge is not within the jurisdiction of the EEOC, the charging party will be directed to the agency which does have jurisdiction. In essence, the EEOC staff at this stage functions as counsel for the charging party.

Before the determination of "reasonable cause" is made, the EEOC will conduct a fact-finding conference between the parties. At such conference, the parties will be encouraged to settle on a "no-fault" basis.

If no settlement can be reached and the EEOC finds reasonable cause for the charge, it will attempt to eliminate the unlawful practice through informal methods such as conference, conciliation and various types of persuasion. This process of conciliation is private and nothing can be done without the consent of all parties. The EEOC prefers to avoid lawsuits, if possible, and will go to great lengths to achieve concensual resolution of a charge.

If conciliation efforts fail, civil action may be initiated against the employer. The EEOC may bring action in its own name against private employers, but it must refer actions against public employers to the Attorney General's office. If neither the EEOC nor the Attorney General initiates civil action, a "Notice of Right to Sue" letter may be issued to the charging party, which informs her that she has 90 days to commence suit in the appropriate federal district court. Generally such letters are issued only when requested by a charging party. It should be noted that whether or not the EEOC finds probable cause for the charge, the charging party may still bring suit against the employer in her own name once she has exhausted her administrative remedies through the EEOC.

In addition to acting upon individual charges, the EEOC, against private employers, or the Attorney General, against state or local governments, may bring action alleging that an employer is carrying on a pattern or practice of

general discrimination.[63] This ability to bring such suits is a powerful weapon against discrimination because it enables the EEOC or the Attorney General to take action against employers who carry on a continuing practice of discrimination, but where discrimination directly against one individual cannot be proved.

Attorney General

The functions of the Attorney General in enforcement of anti-bias laws were discussed above, relative to the EEOC. Again the main task of the Attorney General, with respect to equal employment opportunity, is to bring "patterns and practices" actions against state and local governments.

Labor Department

The Labor Department, since the 1978 reorganization, is vested with total responsibility for ensuring compliance by federal contractors with Executive Order 11246. Specifically, it is the Office of Federal Contract Compliance Programs which has the responsibility. Prior to 1978, responsibility for contract compliance was dispersed throughout a number of federal agencies. Also prior to 1978, the Labor Department was responsible for enforcement of the Equal Pay Act, but the reorganization shifted that responsibility to the EEOC.

Federal Regulations and Guidelines

Title VII and other federal anti-bias laws set out the basic principles of equal employment opportunity law. These laws are clarified and refined within the perimeters of statutory intent by regulations promulgated by the agencies which administer the laws.

The EEOC has promulgated regulations to facilitate the enforcement of Title VII. The regulations proper concern such matters as procedures, employee responsibilities and records and reports, and are of little interest for the purposes of this report. In addition to regulations, the EEOC has issued guidelines on various subjects. The guidelines are the administrative interpretation of Title VII, and as such do not have the force of law. However, they are important, in that the EEOC follows them in the determination of discrimination charges and the courts attach much weight to their provisions.

Guidelines on Discrimination Because of Sex

The guidelines on discrimination because of sex were first published in 1965, and substantially amended in 1972.[64] The guidelines again were amended in 1978 to include guidelines relative to the Pregnancy Disability Amendment to Title VII.[65]

The guidelines take the strong position that an employer cannot limit a job to one sex, nor refuse to hire, promote or pay equally a woman based on

sexual stereotypes. Longer discussion of the specifics of the guidelines will follow in Chapter V, relative to unlawful employment practices, but briefly the guidelines deal with the following:

(1) Sex as a BFOQ;

(2) Separate lines of progression and seniority systems;

(3) Discrimination against married women;

(4) Job opportunity advertising;

(5) Employment agencies;

(6) Pre-employment inquiries as to sex;

(7) Relationship of Title VII to the Equal Pay Act;

(8) Fringe benefits; and

(9) Employment policies relating to pregnancy and childbirth.

Other Regulations

The EEOC is not the only agency which issues regulations relative to fair employment practices.

LEAA Regulations. The Law Enforcement Assistance Administration requires, pursuant to equal employment opportunity guidelines, that state and local agencies receiving grant money under the Omnibus Crime Control and Safe Streets Act of 1968 "formulate, implement, and maintain an equal opportunity program."[66]

Department of Labor Rules and Regulations. The Office of Federal Contract Compliance requires, pursuant to rules and regulations that government contractors verify, that they be equal opportunity employers.[67] "Those regulations include affirmative action and sex discrimination guidelines and rules that deal with employee testing and other selection procedures."[68]

Revenue Sharing Regulations. Local agencies sharing in funds under the State and Local Assistance Act of 1972 are required by regulation to establish procedures for investigation, compliance and hearings relative to equal employment opportunity.[69]

State Equal Employment Opportunity Law

The panoply of federal statutes, regulations and guidelines discussed above does not foreclose state legislative action designed to prevent sex discrimination. In fact, Title VII specifically states that the act is not intended to totally preempt the field of equal employment law. Section 708 of the Act reads:

> Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any state or political subdivision of a state, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.[70]

This section means that a state cannot attempt to circumvent the provisions of Title VII through the enactment of less restrictive legislation, but "state statutes defining sex discrimination more comprehensively than the Civil Rights Act of 1964 shall not be preempted or superceded by Title VII. State statutes may, therefore, provide a remedy for employees who have allegedly been discriminated against, where for whatever reason . . . [federal law] may not be applicable."[71] As has been seen, the principal gap in Title VII coverage is that it only reaches employers who have more than fifteen regular employees. Also, as has been seen, the statute anticipates states' setting up state agencies to investigate employment discrimination complainants.[72]

Kentucky Civil Rights Statute

Kentucky enacted a comprehensive civil rights act in 1966,[73] which went into effect July, 1966. The act was based upon a draft of a model anti-discrimination act prepared by the National Conference of Commissioners on Uniform State Laws. As amended, the Act prohibits discrimination in employment, housing and public accommodation. As originally enacted, the Act did not cover sex discrimination in employment, but it was amended in 1972 to cover such discrimination. Basically the employment provisions of the Act duplicate the provisions of Title VII and the Equal Pay Act, except that the state law applies to all employers with eight or more employees. Additionally, the state Commission on Human Rights possesses stronger enforcement powers than the EEOC.

Unlawful discrimination is defined by KRS 344.040 and reads in its entirety as follows:

> It is an unlawful practice for an employer:
>
> (1) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, or age between forty and sixty-five.[74]

Similar provisions apply the same principle to employment agencies,[75] labor organizations[76] and apprenticeship or training programs.[77] Advertisements for employment which discriminatorily indicate any preference are also prohibited.[78]

Similar to the federal law, the Kentucky Act specifically provides that several activities shall not be deemed unlawful employment practices. Corresponding roughly to the exceptions to the federal Equal Pay Act, KRS 344.100 provides that it shall not be unlawful for an employer to "apply different standards of compensation or different terms of conditions or privileges of employment" where such differences are the result of:

(1) a bona fide seniority or merit system;

(2) a system which measures earings by quantity or quality of production;

(3) different employment locations, where such differences are not the result of an intention to discriminate; or

(4) "any professionally developed ability test," as long as the administration or action upon the results of such test is not used to discriminate.

Enforcement and Administration of State Law

Kentucky statutes provide for a two-tiered system of agencies for the enforcement and administration of state civil rights laws. The principal state-wide agency is the state Commission on Human Rights.[79] Local commissions on human rights are authorized for creation by any city or county, either independently or jointly.[80]

State Commission on Human Rights

Composition. The state Commission on Human Rights is composed of eleven members, one member from each of Kentucky's eight congressional districts and three members from the state-at-large. The members are appointed by the Governor on a bi-partisan basis and shall be "broadly representative of employers, proprietors, trade unions, religious groups, human rights groups and the general public.[81]

Powers. In addition to conducting investigations of discrimination as discussed below, the Commission conducts research projects and publishes reports on discrimination in Kentucky, holds public hearings, cooperates with public and private organizations to discourage discrimination, makes an annual report to the Governor and generally works "to encourage fair treatment for all persons."[82]

The primary purpose of the Commission is "to receive and investigate complaints of discrimination and recommend ways of eliminating any injustice occasioned thereby."[83] The Commission is granted broad powers to carry out the investigations: it may employ staff, including attorneys, cooperate with the EEOC and local commissions, "receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints," require answers to interrogatories, subpoena witnesses and documents, furnish assistance to complainants and adopt such rules and regulations as will effectuate the purposes of the Act.[84] The regulations adopted by the Commission are complied under Title 104 of the Kentucky Administrative Regulations.[85]

Complaint Procedure. A complaint is initiated before the Commission either by the complainant's filing a written notarized complaint with the Louisville or Frankfort office of the Commission, the referral by the EEOC of a complaint to the Commission, or by action of a member of the Commission. A complainant filing directly with the Commission must do so within 180 days of the alleged discriminatory act. Anytime after the complaint is filed it may

be dismissed due to lack of probable cause or for other reasons. Upon such dismissal, the complainant, with 10 days, may file for reconsideration.

If not dismissed on its face, the complaint shall be turned over to an investigator who shall seek to determine if there is probable cause for the allegations. In this so-called preliminary investigation the investigator shall have access to premises, records and documents relating to the complaint and, if refused, shall have subpoena power.

If the preliminary investigation indicates probable cause for the allegations, the process enters the "conference, conciliation and persuasion" stage, where the complainant, respondent and investigator attempt to mutually eliminate and remedy the unlawful discriminatory practice. If the parties reach a satisfactory solution to the complaint, a conciliation agreement shall be signed, embodying that solution.

If the "conference, conciliation and persuasion" process fails to produce a mutually satisfactory resolution of the complaint, a formal hearing shall be held to adjudicate the complaint. The hearing shall be before hearing commissioners appointed by the chairman of the Commission. The parties shall have the right to counsel, to cross-examine witnesses under oath, file briefs, compel discovery and the attendance of witnesses. Upon the presentation of evidence by the parties to the action or any intervenors, and a finding by the hearing commissioners that the respondent committed an unlawful discriminatory practice, an order shall be issued to the respondent to "cease and desist" in the unlawful practice and to take such "affirmative action as in the judgment of the Commission will carry out the purpose of the Act."[86] Thus, unlike the EEOC, the state Commission has been given strong powers to directly prohibit and remedy unlawful employment practices.

Either party aggrieved by the order may, within six months, make application to reopen the case, or may appeal to the circuit court for review. Appeal shall be made to the circuit court in the county in which the alleged discriminatory practice occurred or in the county in which the respondent resides or has his principal place of residence.

Local Commissions on Human Rights

Any city or county, either independently or jointly, may create a human rights commission (local commission).[87] The local commission shall have the same powers as the state commission to enforce ordinances, orders and resolutions prohibiting discrimination adopted pursuant to the authority granted by KRS 344.300.[88] No anti-discrimination ordinance adopted by a local government "shall attempt to exempt more transactions from its coverage than are exempted by KRS 344.365."[89]

Local commissions may also enter into cooperative working agreements with the EEOC or with any federal or state agency to achieve the purposes of the Act.[90] The only local commission which is a "706 Agency" pursuant to Title VII is the Lexington-Fayette Urban-County Human Rights Commission.

Miscellaneous State Anti-Discrimination Laws

Wage Discrimination Because of Sex

KRS 337.423 prohibits any person who employs regularly eight or more employees from discriminating "between employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility." Differentials are permitted where made pursuant to "established seniority systems or merit systems which do not discriminate on the basis of sex." The language of this section is identical to that of the Equal Pay Act of 1963 and in, fact, is specifically applicable only to employers who are not covered by that Act. KRS 337.423 is also similar to KRS 344.100, which it predates. Unlike the equal employment provisions of KRS Chapter 344, the enforcement of KRS 337.423 is not the responsibility of the Commission on Human Rights, but that of the Commissioner of Labor. KRS 337.425 gives the Commissioner subpoena powers, but limits his powers of enforcement to the "informal methods of conference, conciliation and persuasion." In order to force an employer to comply, the aggrieved woman must bring a civil action against the employer in circuit court, pursuant to KRS 337.427. Under KRS 337.430 court action under the Act must be commenced no later than six months after the cause of action.

State Employees

KRS 13.310 protects any state employee within the classified service from being "appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions or affiliations or ethnic origin or sex or handicap."

Commission on Women

A twenty-five member Commission on Women was created by the 1970 General Assembly.[91] The membership is appointed by the Governor, and is to reflect the "several geographical regions and socioeconomic groupings of the state" and be "broadly representative of the women of the state."

The Commission's powers and duties are solely advisory and educational. The function of the Commission under KRS 344.520 is to:

(1) Promote, encourage and provide advisory assistance in the establishment of local volunteer community improvement programs for, and of interest to, women;

(2) Conduct programs, studies, seminars and conferences, and encourage state and local women's business, professional and civic organizations to do likewise, to educate the public to the problems of women;

(3) Consult with and advise the Governor and the agencies, departments, boards and commissions of the state and local and municipal governments on matters pertaining to women; and

(4) Cooperate with the federal government and with the governments of other states in programs relating to women.

CHAPTER V

UNLAWFUL EMPLOYMENT PRACTICES

In Chapter III, stereotyping and resultant discriminatory mechanisms were discussed in general terms. Chapter IV examined the body of statutory law enacted on both the federal and state levels to combat employment discrimination against women. This chapter will give a brief survey of how the courts have construed and expanded those laws in response to actual cases of discrimination.

Legal Theories of Discrimination

Before a person can have a cause of action against an employer for a discriminatory act, the law must determine that that act is illegal. An act may be discriminatory as defined in Chapter III, but until the Constitution, the legislature or some court states that the act is unlawful, the person discriminated against has no remedy. This simple fact has plagued women in their struggle for equal employment opportunities. As stated earlier, the courts have consistently refused to rule that women have a constitutional right to equal employment opportunities. Women have no independent cause of action outside of the provisions of Title VII, the Equal Pay Act and other similar laws. Thus, the hard fought for rights which women have today could disappear instantly should those laws ever be repealed.

Although the courts have refused to bring women under the protection of the 14th amendment and the equal protection clause of the federal constitution, they have tended to construe Title VII and the Equal Pay Act liberally. In a series of cases, courts have developed three theories of discrimination: "(1) disparate treatment, (2) policies or practices which perpetrate in the present [the] effects of past discrimination, and (3) policies or practices having disparate impact not justified by business necessity."[92] It should be noted that all these theories have been developed, not in sex discrimination cases, but in radical discrimination cases, and subsequently have been applied in sex discrimination situations.

Disparate Treatment

The theory of disparate treatment is the simplest to understand. It, in fact, was probably all Congress had in mind when Title VII was enacted. Under the disparate treatment theory, an employer commits an unlawful employment practice if he treats one person differently (disparately) than he treats other persons, specifically because of that person's sex. Obvious examples would be an employer's refusal to hire a woman because she is a woman, or an employer's paying a woman a lower wage than he pays a man for the same work.

Under the disparate treatment theory, the petitioner must show that the employer intended to discriminate against her because of her sex. Although intent needs to be proved, the courts were quick to recognize that direct evidence of discrimination is generally virtually impossible to produce. The use of comparative evidence, based on the concept of "similarly situated persons,"

is therefore permitted, to enable the petitioner to prove intent on the part of the employer by reason of his actions. Thus if:

> (1) Persons of one . . . sex . . . receive different treatment from persons of another . . . sex . . . who are otherwise similarly situated, and
>
> (2) There is no adequate explanation for the different treatment, then it is reasonable to infer that sex was a factor in the disparate treatment.[93]

As Chapter III demonstrated, intentional discrimination is only one aspect of the discrimination which can be faced by a woman seeking equal employment opportunity. Banning intentional discrimination is only a part of the solution. It is for this reason that early court decisions were quick to expand the scope of Title VII to cover unintentional acts of discrimination.

Policies or Practices Which Perpetrate in the Present the Effects of Past Discrimination

The first judicial enlargement of the scope of Title VII involved policies or practices which perpetrate in the present the effects of past discrimination. An employer, for example, women only in certain less desirable departments, but because of the transfer and seniority system existing in his company, the women who were originally hired in the less desirable departments will remain in those departments. Under this theory, any personnel policy (albeit neutral on its face) which locks in the effects of past discrimination is unlawful. It is irrelevant that the employer does not intend a discriminatory act, because, unlike the disparate treatment theory, this concept does not require intent, but instead looks to the results of the action.

Policies or Practices Having Disparate Impact Not Justified by Business Necessity

The most important extension of the scope of Title VII is the development of the theory of disparate impact. This concept is the logical extension of the perpetration of past discrimination theory, in that it applies to acts which appear on their face to be non-discriminatory but in actual effect have discriminatory impact. Under this theory, it is an unlawful employment practice for an employer to have any requirement which has a substantial adverse impact on any protected class unless such requirement can be proved to be a business necessity. The classic example of such a situation is an employment test which is failed by an abnormally large number of minority applicants, but the theory can be applied to any requirement which has an adverse impact on a protected class. Requirements often challenged by women are height and weight requirements and weight lifting requirements. Again the adverse impact theory is result-oriented, and it is irrelevant that the employer established the challenged requirement with no discriminatory intent. Unless the employer can demonstrate that the challenged requirement is the result of business necessity, it is unlawful.

Sex Discrimination

The three theories of discrimination can be used by members of any class protected by Title VII. This section will deal with specific issues relating to sex discrimination.

Bona Fide Occupational Qualification (BFOQ)

Section 703(e) of Title VII appears specifically to permit in certain instances disparate treatment based on sex. Those instances occur when "sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."[94] However, both the courts and the EEOC have taken a dim view of the BFOQ exception, and specifically, "the Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels--'men's jobs' and 'women's jobs'--tend to deny opportunities necessary to one sex or the other."[95]

Courts have proved equally non-responsive to the concept of the BFOQ. Generally, the exception is permitted only where sex is an absolute qualification, e.g., a wet nurse; where sex is necessary for authenticity or genuineness, e. g., an actress; or where there is a right of privacy involved, e.g., supervision of bathing.

In Weeks v. Southern Bell Tel. and Tel. Co., the employer had a policy of denying to women jobs which required lifting over 30 pounds. The court denied the employer's claim that such ability to perform was a BFOQ, and stated that the employer must show that he "had reasonable cause to believe, that is a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved."[96] In other words, the employer must look to the actual abilities of women, not to the employer's stereotyped opinions of what women as a group are capable of. That point was brought home more forcibly in Rosenfeld v. Southern Pacific Co., which was another weight lifting case. The court denied the employer's BFOQ defense by stating that "individuals must be judged as individuals, and not on the basis of characteristics generally attributed to racial, religious, or sex groups."[97]

A slightly different situation was presented in Diaz v. Pan American World Airlines. The employer refused to hire men as stewards on airplanes, alleging that sex was a BFOQ, because women did a superior job in making passengers comfortable. The court denied the BFOQ exception and stated that "discrimination based on sex is valid only when the essence of the business operation would be undermined by not hiring members of one sex exclusively."[98] The court went on to say that "before sex discrimination can be practiced, it must not only be shown that it is impractical to find men that possess the abilities that most women possess, but that the abilities are necessary to the business, not merely tangential."[99]

With respect to the BFOQ exception based on ability to perform , the weight of authority appears to be that the exception will be sustained only where primary sex characteristics, i.e., those which relate to the reproductive function, relate to the essence of the job. "Secondary sexual character-

istics, such as strength, generally attributed to a particular sex but not necessarily exhibited by all members of the sex . . . are therefore, not BFOQ."[100]

None of this means that an employer must hire a woman even if she would be unable to perform the tasks necessary for the job, but it does mean that an employer must evaluate a woman on her individual merits, not on the basis of what he feels women in general can do.

State Protective Laws

As discussed in Chapter III, many states enacted laws to "protect" women from the harsher aspects of the work place. These laws generally were based upon stereotyped views of the capabilities of women and functioned not to protect women but to discriminate against them, by closing many fields of employment to them.

It is not a justification for an employer to refuse to hire women because of a state protective law. Section 708 of Title VII states specifically that the fact that a person performs pursuant to a state law is no defense for an unlawful employment practice. Generally, employers have attempted to state that sex is a BFOQ mandated by a state law.

There are two types of state labor laws which fall under the purview of Title VII. These are "restrictive" laws, which limit or restrict the ability of women to work in certain fields, and "beneficial" laws, which purport to give women special benefits not given to male workers.

The EEOC Guidelines take the position that restrictive laws are discriminatory and shall not be considered for BFOQ purposes. Beneficial laws are considered to be discriminatory to men and their benefits must be extended to men.[101]

The courts have taken the position that "restrictive" laws are invalid when not based upon any immutable characteristic of the sex. "Decisions in the Third, Fifth and Seventh Circuits invalidating 'restrictive' state protective legislation involving maximum hours of work, weight lifting and the like have resulted in virtual universal abandonment or repeal of the legislation falling into this category."[102]

The question of what to do with "beneficial" laws is still an open one. Some courts have treated them the same as restrictive laws and simply invalidated them, while other courts have extended their benefits to men.

Separate Lines of Progression and Seniority Systems

Another exception to the general prohibition against sex discrimination, is contained in Section 703(h) of Title VII. That section states that it is not an unlawful employment practice to apply "different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority system . . . provided that such differences are not the result of an intention to discriminate because of . . . sex."

The EEOC Guidelines relating to separate lines of progression and seniority systems read as follows:

> (a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:
>
> (1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.
>
> (2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.
>
> (b) A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members or either sex into jobs which members of that sex would reasonably be expected to perform.[103]

While Section 703(h) permits differences relative to the operation of bona fide seniority systems, the courts nevertheless have developed the theory that a seniority system would not be deemed bona fide for the purposes of Section 703(h) where such system perpetrated in the present the effects of past discrimination. In Palmer v. General Mills, Inc., the court was faced with the situation where, prior to 1971, women had been prohibited from working in certain departments of the company because of state protective laws. The court ruled that even though the seniority system was neutral on its face, its effect was to discriminate against women because "it is readily apparent that the women employees will always suffer from the disadvantages of the 1971 entry date. Although they will advance even after that date, they still cannot compete equally with male employees who were able to transfer without the restrictions of state law."[104]

The court went on to state that even if a seniority system is discriminatory in effect, it can be justified if it is proven to be a business necessity. Here the court is using the disparate-impact-absent-business-necessity theory of discrimination. The test for business necessity set out is "whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business."[105]

Fringe Benefits

Fringe benefits are defined broadly by the EEOC Guidelines as including "medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions and privileges of employment."[106] Those guidelines make it an unlawful employment practice to discriminate between men and women with regard to fringe benefits. It is no defense that the cost of such benefits is greater than respect to one sex than with the other.

Benefits under employee benefit plans must be equal with respect to women, even if disparate treatment may be actuarially sound; e.g., because women tend to live longer than men on the average, if both retire at 65, women will receive more benefits. The basis behind this judgment is consistent with the principles developed under the disparate treatment theory. The fact that an average woman lives longer than the average man is irrelevant, because persons must be considered as individuals and on a individual level no one can predict that any one woman will live longer than any one man; thus they must be treated equally. That principle was enunciated in Manhart v. City of Los Angeles, where the court stated that ". . . all stereotypical treatment of persons based on . . . sex whether rational or irrational is dead. Because the [employer's] practice in question here violates those considerations by applying the general actuarial characteristics of female employees who in reality may or may not outlive individual male employees . . . the plaintiffs have established a case of discrimination."[107]

The fringe benefit issue which has generated the most controversy and most interest in recent years is the question of pregnancy and maternity benefits. The EEOC Guidelines took the position that pregnancy was irrelevant to the employment situation and it was disparate treatment for an employer to penalize or give extra benefits because of a woman's pregnancy.[108] In 1976, the Supreme Court ruled in opposition to the position taken by the EEOC Guidelines. In General Electric Co. v. Gilbert, a woman employee was denied disability benefits under the employer's disability insurance plan because her disability was caused by pregnancy. The court ruled that the exclusion of pregnancy benefits from a comprehensive disability insurance plan did not represent disparate treatment, because the pregnancy classification was not a gender classification, in that it was not a pretext designed to effect an invidious discrimination against women.[109]

Congress was quick to react to Gilbert and added Section 701(k) to Title VII, specifically defining sex discrimination to include pregnancy discrimination.[110] Under Section 701(k) of Title VII, as interpreted by the EEOC Guidelines, an employer is not required to grant pregnancy benefits to his employees, but he must "provide the same benefits for pregnancy-related conditions as [he] provides for other conditions. Thus, disability benefits must be paid for absences resulting from pregnancy-related temporary disabilities to the same extent as they are paid for absences resulting from other temporary disabilities."[111]

In simplest form, the employer must disregard the fact that the disability is caused by pregnancy and must give the woman employee the same benefits and considerations he would if the disability were caused by a broken arm, for example. Thus, if it is the employer's policy to grant paid sick leave he must give her paid sick leave. or if he merely grants unpaid leave with no loss of seniority, he must do the same in cases of pregnancy. Conversely, if he grants no leave to any employees, no matter what the disability, he need not grant any benefits to a pregnant woman.

Another unlawful employment practice relative to pregnancy is requiring a pregnant woman to take a leave of absence after the start of her pregnancy, or preventing her return to work until a certain time after the birth of the baby. Such requirements are based on stereotypes, not upon an individual's actual ability, and are thus illegal.

Besides being unlawful to withhold benefits to women on account of pregnancy, it is also unlawful to grant them added benefits which are denied to men. Such a practice would be disparate treatment of the male employees.

"Sex-plus" Discrimination

A particularly complex question of discrimination arises in cases where an employer treats only certain members of one sex disparately, in that he adds a criterion or factor for one sex which is not added for the other sex. An example would be an employer who will not hire married women, but will hire married men. He has added the requirement of being unmarried to women applicants while not adding such a requirement to men applicants.

One of the earliest cases to deal with the "sex-plus" question involved an employer who forbade married women from being stewardesses on its airplanes. The court, in Sprogis v. United Airlines, held such action to be disparate treatment. It justified its expansion of Title VII by stating that "the scope of Section 703(a)(1) is not confined to explicit discrimination based "solely" on sex. In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."[112]

Not all "sex-plus" requirements are unlawful. The courts have consistently upheld as permissible different appearance standards for male and female employees. In Dodge v. Giant Food, Inc., the court upheld hair length regulations by reasoning that such regulations "are classifications by sex which do not limit employment opportunities by making distinctions based on immutable personal characteristics, which do not represent any attempt by the employer to prevent the employment of a particular sex. Title VII never was intended to encompass sexual classifications having only an insignificant effect on employment opportunities."[113]

The rationale behind the sex-plus cases seems to be that a sex-plus requirement is only unlawful where the requirement relates to:

(1) An immutable characteristics of the sex;

(2) A characteristic which, while mutable, involves such fundamental rights as the right to have children or to marry; or

(3) Characteristics which, although mutable, significantly affect the employment opportunities afforded one sex in relation to the other.

Equal Pay

The Equal Pay Act is legislation separate from Title VII, even though any violation of the Equal Pay Act would also be a violation of Title VII. The Act is very limited in scope, in that it is applicable solely to sex-based differentials in wages. A good statement of the purpose of the Act is found in Schulz v. Wheaton Glass Co.: "The Act was intended as a broad charter of women's rights in the economic field. It sought to overcome the age-old belief in women's inferiority and to eliminate the depressing effects on living standards of reduced wages for female workers and the economic and social consequences which flow from it."[114]

The obvious flaw in the Equal Pay Act is that the obligation of equal pay is imposed only where the jobs are "substantially equal." Thus it is possible for an employer to pay a woman less than a man through a job classification system which is "gerrymandered" to favor men. Particularly obvious schemes to do that can be reached under the Act, because the courts will disregard obviously sham job classifications designed to permit disparate treatment of women. The test is that if the jobs are "substantially equal" they will be deemed to be the same. Jobs are substantially equal if they involve equal skill, effort and responsibility. Skill is deemed to involve such factors as experience, training, education and ability. Jobs are not deemed to entail equal effort if the higher paid job involves tasks which:

(1) Require extra effort;

(2) Consume a significant amount of the time of all those whose pay differentials are to be justified in terms of them; and

(3) Are of an economic value commensurate with the pay differential.

Equal Employment Litigation

After the petitioner has exhausted her administrative remedies through the EEOC and state 706 agencies, she, in her own name, the EEOC or the Attorney General, may bring an action against the employer in Federal District Court. An action may be brought by an individual plaintiff or it may be brought as a class action. If suit is brought as a class action, the aggrieved employe is not just seeking a remedy for wrongs perpetrated against herself, but is seeking redress for all persons similarly situated who have also been victims of the employer's unlawful employment practice.

The trial in district court is de novo, in that the trier of fact is not bound by the findings of the EEOC, although such findings are afforded much weight in evidence.

For the employe to win her case against the employer, she must prove that the employer committed an unlawful employment practice which disparately affected her, represented the perpetration in the present of the effects of past discrimination, or had a disparate impact upon her. As discussed earlier, with respect to the three legal theories of discrimination, the employer's intent is relevant only where disparate treatment is alleged. Therefore, suits alleging disparate treatment and suits alleging either of the other two theories involve different allocations of proof.

Proving Disparate Treatment

In disparate treatment cases, the ultimate issue is the motivation or intent of the employer: was his differential treatment of the plaintiff based on a sexually discriminatory decision? The courts recognize that direct evidence of discrimination, in most cases, will be impossible to produce, so they permit comparative evidence to be introduced as proof. To make the prima facie case, it is sufficient if the employe shows that persons of one sex receive different treatment than persons of the other sex who are otherwise similarly situated, and there is no adequate explanation for the differential

treatment. If the plaintiff can prove this to the point that the court can reasonably infer that sex was a factor in the disparate treatment, she has made her prima facie case and an inference of discrimination on the part of the employer arises. The burden of proof then shifts to the employer to demonstrate that there is some other non-discriminatory reason for the disparate treatment. The court, at the end of the presentation of the evidence, will weigh the evidence presented by each side and, if the plaintiff has shown a discriminatory motive or intent by a preponderance of the evidence, she will win her case.

Proving Disparate Impact or Present Effects Cases

As opposed to disparate treatment cases, the plaintiff in disparate impact or present effects cases need not prove the employer's intent, but need only prove that the employer's actions resulted in a disparate impact, and there is no valid reason for the disparity. To prove the prima facie case, the plaintiff need only show that there is disparate treatment of women in relation to men on the part of the employer. This disparity may be demonstrated by statistical data that shows that women are underrepresented in the employer's workforce.

Once the plaintiff had made her prima facie case, by showing the existence of a substantial disparate impact on females, the burden of proof shifts to the employer. He must show that the disparate impact is caused by a requirement that is job-related, a business necessity, or a BFOQ, or furnish some other explanation showing that the disparate impact is not the result of unlawful discrimination. Even if the employer succeeds in convincing the court that the disparate impact is not the result of discrimination, the plaintiff has the opportunity to show that the employer should and could have followed another practice which would have had a lesser disparate impact.

Remedies

Once the plaintiff/employee has convinced the court by the evidence presented that the employer engaged in an unlawful employment practice, the court will grant appropriate relief. Title VII gives the court the power to grant "equitable relief as the court deems appropriate."[115] Thus the court is given broad discretion to fashion a remedy which will best serve the aggrieved parties.

Injunctive Relief

If the discriminatory practice is on-going, the court may enjoin further such practices on the part of the employer. In fact, pending final outcome of the case the plaintiff may request and the court may grant a preliminary injunction or temporary restraining order to preserve the status quo between the parties.

Affirmative Relief

In addition to injunctive relief, the court may order appropriate affirmative relief, i.e., require the employer to take some further actions to compensate for the discrimination against the employe. This authorization of the right to grant affirmative relief is given because one of the purposes of "Title VII is to make persons whole for injuries suffered on account of unlawful employment discrimination."[116] Affirmative relief can be fashioned to best meet the needs of the successful plaintiff and can thus take many forms. The employer may be ordered by the court to hire, promote or reinstate the plaintiff, or plaintiffs. Additionally, the employer may be liable for back-pay or the plaintiff's attorney's fees, or he may be required to undertake some form of affirmative action. The last three remedies have generated the most controversy and shall be discussed below.

Back-Pay. Title VII authorizes courts to award back-pay to a successful plaintiff.[117] The total amount which may be awarded is limited, in that back-pay liability (1) is limited to a maximum period of two years prior to the filing of the charge with the EEOC, and (2) is limited by the pay earned, or earnable through the exercise of reasonable diligence, by the plaintiff during such period. The leading case on the awarding of back-pay is Albemarle Paper Co. v. Moody.[118] In that case, "the Supreme Court . . . concluded that once unlawful discrimination has been found to exist, back-pay should, as a general rule, be awarded. It should be denied only for reasons that would not frustrate the central purposes of Title VII: that is, eradicating discrimination and making persons whole. Further, if back-pay is to be denied, the court must make reasons for denial very clear."[119]

Attorney's Fees. Because of the great costs which can be involved in prosecuting or defending an unlawful employment practice case, the court may grant the prevailing party "a reasonable attorney's fee as part of the costs."[120]

Affirmative Action. One of the most controversial remedies which may be ordered by a court is some form of affirmative action. Affirmative action may be defined as "an obligation on the part of employers to remove barriers to equal employment opportunity, to identify persons unfairly excluded, and to act to enable them to compete for jobs on an equal basis."[121] Affirmative action is an appropriate remedy when an employer has carried on an unlawful employment practice which has resulted in women's being under-utilized in his workforce as a whole or even in specific job categories. In essence, the employer must make additional efforts in favor of a group against whom he has carried on a policy of discrimination in the past.

If an employer is ordered to take affirmative action, he will usually prepare an affirmative action plan which will set out in detail what steps he will undertake. What those steps are will depend on the circumstances and the severity of the past discrimination. At its simplest, an affirmative action program may consist of nothing more than the requirement that an employer advertise job openings in local newspapers. To remedy the most severe cases of discrimination, an affirmative action program may require that the employer establish definite quotas which require that certain numbers of women be employed within a given time period. In between those extremes, various components may be utilized in affirmative action programs. Examples might be training programs designed to increase women's skills so they may compete with men on an equal basis for job openings, formal employee grievance procedures, active recruitment efforts, or the establishment of goals and timetables for the employment of women.

Basically, affirmative action programs are designed to enable members of a group who have once suffered discrimination at the hands of the employer to be able to compete equally with members of groups who have suffered no discrimination. Even in its most extreme form, affirmative action is not intended to give unqualified people jobs over qualified people, but is intended only to give qualified people who have not received fair treatment a small advantage to compensate them for the past wrongs. The theory behind this is that had it not been for discrimination, those people would be able to compete equally, and since it is discrimination which has limited their ability to compete, discrimination has not been totally remedied unless the lingering effects of that discrimination are removed.

Affirmative action has come under considerable attack in recent years. People who are not members of protected classes, i.e., white males, have begun to challenge affirmative action programs on the basis that the special considerations given to members of protected classes reduce their own employment opportunities and thus discriminate against the members of non-protected classes. The term "reverse discrimination" has been coined for this effect.

The affirmative action mechanism most often attacked is the setting of quotas, i.e., the requirement that an employer hire X number of women per Y number of men. The Supreme Court has ruled in two recent cases on quota systems.

The most celebrated case, Regents of California v. Bakke, did not involve an employment situation, but concerned college admissions policies. In a very narrowly drawn opinion a divided Supreme Court ruled that the use of quotas in a college admissions system was unlawful.[122] This case was not actually applicable to employment but it presaged the attitude the court might take when presented with an employment case. An employment case, United Steelworkers of America v. Weber, came before the court soon after Bakke.[123] In that case, the Supreme Court upheld a voluntary affirmative action plan which required that 50% of all new apprentices hired be black, until the percentage of workers in the plant was commensurate with the number of blacks in the local labor force. The plaintiff, a white male, was not hired as an apprentice because of this quota system and alleged discrimination. The court narrowly confined its opinion to voluntary affirmative action plans in the private sector and upheld the plan in question. The court made clear that Title VII does not condemn all private, voluntary affirmative action plans, because to rule otherwise would contravene the purpose of the statute. The court did not attempt to define in detail the demarcation line between permissible and impermissible affirmative action plans, but did list which criteria it felt important in upholding the plan in question.

> The plan does not unnecessarily trammel the interests of the white employees. The plan does not require the discharge of white workers and their replacement with new black hires. Nor does the plan create an absolute bar to the advancement of white employees; half of those trained in the program will be white. Moreover, the plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance.[124]

In light of Weber, all that can be said is that voluntary affirmative action plans are not necessarily unlawful, but are to be considered by the courts on a case-by-case basis.

While this discussion has been concerned with affirmation action as a judicial remedy, it should be clear from the discussion of Weber that it is not confined entirely to such situations. Affirmative action may be a part of a conciliation agreement entered into between an employer and employee pursuant to EEOC procedures. Affirmative action is also required as a prerequisite to contracting with the Federal Government in many areas, as well as for receiving certain types of federal grants. Increasingly, however, employers, especially in the public sector, are voluntarily instituting affirmative action plan, either because the realize that fair employment practices are good business or because they want to head off civil action under Title VII (which might mandate such plans).

Summary

It is hoped that this chapter has conveyed in at least a general sense, the basic trends and principles involved in the judicial interpretation of employment discrimination laws. Perhaps it is something of an over-simplification but the basic principle behind anti-bias laws may be summarized as follows: PEOPLE SHOULD BE CONSIDERED AND TREATED AS INDIVIDUALS, NOT IN ACCORDANCE WITH STEREOTYPES.

> It is now well recognized that employment decisions cannot be predicted on mere 'stereotyped' impressions about the characteristics of males and females. Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals or for paying them less.[125]

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

The unfortunate conclusion which can be drawn from an analysis of the information contained in this report is that despite the existence on the federal level for over a decade and a half and on the state level for almost a decade, of strong anti-sex bias laws, women continue to suffer from the effects of discrimination. This conclusion is inescapable. Women are, on the average, as well educated as men. Women are as industrious and productive as men. Women are as able as men. Yet, Chapter II shows that, nationally, women earn approximately 60% of what men earn, and in Kentucky earn only 44% of what men earn. Women continue to be concentrated in low-paying and low-status clerical and service jobs, and women continue to make few inroads into most traditionally male-dominated jobs.

The reason women have made such slow progress in gaining equal employment opportunities is suggested by this report. As discussed in Chapter III, most discrimination against women has been caused not by conscious animosity but by stereotyped views of what women are capable of. The pervasive image in our society of the average woman is the antithesis of the popular idea of a good business person. While this report has demonstrated the illusoriness of stereotypes, it is impossible to change, overnight, ways of thinking which have been for so long a part of the national psyche. America is in an era of transition. People are being asked to rethink their perceptions of women. It is natural that this process of changing a national consciousness will take some time. Some people will never be able to think of women in terms other than "mother," "housewife," "secretary"; others will be able to change but it will take time. Congress and the Kentucky General Assembly can prohibit discrimination, but they cannot change the way people think, and that is what people are being asked to do. And that is the root of the problem of the slowness with which women have advanced in the work place.

This is not to say that the anti-bias laws are failures; to the contrary, they have been very successful. As has been shown, sterotypes and discrimination represent a vicious cycle. People hold stereotypes that women cannot do a certain job, so they discriminate against women and prohibit them from doing that job, which then reinforces the stereotype that women are unable to do the job because no women are doing it. The anti-bias laws give women a means of breaking this cycle, to get into a non-traditional area of employment and prove that they can do the job as well as men. If there were no anti-bias laws, the discrimination-stereotype cycle might well go unbroken. Anti-bias laws speed up and assist the inevitable progress of women. It is thus very important that those laws never be weakened or diluted.

While the major reason for the laborious pace of the progress of women's rights can be attributed to the slowness with which people can alter their long-cherished perceptions, several more tangible forces inhibit the advancement of women. The following lists several factors which directly inhibit the assimilation of women into the workforce:

(1) There are a great number of employers in the United States, and if only a small percentage of them discriminate against women, and need to be charged with discrimination before the EEOC, the Kentucky Commission on Human Rights, or the courts,

it will take years to process all the complaints. The wheels of our legal system move very slowly, and the number of complaints which must be processed is great; there is no way that progress can be rapid.

(2) To reach an employer who discriminates, there is needed, in most cases, an aggrieved party who will prosecute the charge against him. Unfortunately many women are unaware of their rights under the law and will do nothing when faced with discrimination, because they think that "it's just the way things are." As long as employers can get away with discrimination, progress is bound to be slow. Women need to be educated regarding their rights, so that they will exercise those rights when confronted with discrimination.

(3) Finally, even if all vestiges of discrimination were removed, and all stereotyped images of women had been banished from the collective consciousness of Americans, full equality for women in the job market would not yet be achieved. Women are just now entering fields that were closed to them in the past; it will take time for them to progress. Woman are just now beginning to be educated as young people to fill professional, scientific and technical positions when they enter the job market. The composition of the nation's workforce changes slowly; people move within it in a basically orderly progression. The people in top positions, and the people who are the heirs-apparent to those jobs are today generally men, but women today who are in entry level positions will be moving up in seniority and in time women will begin to move into the high prestige positions.

The laws to guarantee women equal employment opportunities are in operation. It will just take time to enforce those laws against discriminatory employers. It will take time to educate women so they can be qualified for the jobs which are now open to them. It will take time for the women beginning in non-traditional jobs to move up in seniority into the top positions. But as long as the anti-bias laws remain law, and as long as they continue to be enforced, progress for women is inevitable.

Recommendations

The resolution adopted by the LRC directing this study, requested that legislation be proposed for the 1980 session of the Kentucky General Assembly. This study has demonstrated that there is actually little, if any, need for new legislation on the state level in the area of employment discrimination law. Most such legislation is federal and thus cannot be affected by any act of a state legislature. Kentucky, since 1972, has possessed a strong law prohibiting employment discrimination against women. The law was based closely upon a model uniform law and has been upgraded regularly to reflect new developments in the law. A strong enforcement mechanism is provided by the creation of the Kentucky Commission on Human Rights and the authorization for local commissions. Additionally, Kentucky law has established an advisory agency, The Commission on Women, whose duty it is to educate women as to their rights and to watch over these rights to ensure that they are being honored. The Kentucky General Assembly has enacted strong laws, provided for their

enforcement and created an advocacy agency within state government specifically concerned with women. It is now the responsibility of the agencies so charged to enforce those laws vigorously, for employers to obey the laws and for women to assert their rights under the law.

Notwithstanding the above, the General Assembly can act to improve the law and the enforcement effort. Generally, these recommendations merely involve the fine-tuning of a mechanism which intrinsically is in good condition.

To "fine-tune" the anti-employment discrimination laws as applicable to women, this study recommends: (1) that KRS Chapter 344 be amended so as to make it an unlawful employment practice for an employer to discriminate against pregnant women in the area of disability benefits; (2) that the Kentucky General Assembly express its strong support for the principle of equal employment opportunity for women and its belief that the Commission on Human Rights should attach a high priority to securing such equal opportunities for women in the coming decade, and (3) that the Kentucky Commission on Human Rights be directed to prepare on a regular basis a detailed analysis of the position of women in Kentucky's work force.

Pregnancy Disability Amendments

Since the enactment of the Kentucky Civil Rights Act, modeled, as it is, so closely upon the federal law, it has been the policy of the state to amend it to reflect any major amendments in the federal law. As discussed in Chapter IV, Title VII was amended in 1978 to include a provision which made it an unlawful employment practice for an employer who provides comprehensive disability insurance for his employes to withhold such benefits from a woman whose disability is the result of pregnancy. This amendment is an important tool in the struggle for equal employment opportunities for women, and language similar to the federal language should be incorporated into Chapter 344, to make such discrimination an unlawful practice under Kentucky law, would be to amend the definitional section of KRS Chapter 344, KRS 344.030, to include the following language:

> 'Because of sex' or 'on the basis of sex,' means because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

Support for Equal Employment Opportunities for Women

The Kentucky General Assembly has done much to assist and help women through the enactment of laws designed to prohibit discrimination against women. It would be an important gesture, if the General Assembly, in its session at the beginning of the new decade, would strongly and clearly announce its firm commitment to the establishment of equal employment opportunities for women by the end of the decade. While such a declaration would have no real force of law, it would put employers on notice that discrimi-

nation will not be tolerated and would assure women that Kentucky is steadfast in its determination to secure equal rights for them. Such a declaration would also give a clear message to the Kentucky Commission on Human Rights that the securing of equal rights for women is to be given the highest priority.

Analysis of Women in the Workforce

Even though the Kentucky General Assembly has enacted strong anti-bias laws, the enforcement effort against sex discrimination has suffered because of a dearth of information concerning exactly how women are faring in the work places of Kentucky. There is a definite need for the securing and publishing, on a regular basis, of detailed information concerning women in employment. Not only would such information assist the Commission on Human Rights in determining where enforcement is most needed, it would also, perhaps, lessen the need for administrative and judicial enforcement by bringing discrimination out of the shadow and subjecting it to the glare of publicity.

This study has been a very general analysis of discrimination against women. The statistical information contained herein is general with respect to Kentucky, being based upon somewhat dated Bureau of Census data, which was the most recent data available. What is needed is for more detailed information which will enable the Commission to determine exactly where its enforcement efforts are most needed.

The 1980 federal census will begin soon, and will, it is hoped, provide extensive information about women in employment. The census data, however, will not be available until 1981 and will not be specific enough with respect to Kentucky.

The Commission on Human Rights has, in the past, prepared and published reports on women. Unfortunately these reports have been limited in scope. The most important of these studies is called "Status of Women in Kentucky State Agencies," which is published biennially.[126] This report is a detailed statistical analysis of women in state government, based upon data provided by the state personnel department. It analyzes salary levels, number of women per department, and distribution of women in the various job classifications. Recently, the Commission issued two reports on the workforce in state university facilities, which, while primarily concerned with Black employment, also analyzed female employment.[127]

As important as these studies may be, they provide a very incomplete picture of women in Kentucky's work force. No detailed analysis has ever been prepared of women in the private sector, or of women employed by local governments, the two areas where the majority of Kentucky's workers are employed.

Ironically, the Commission has in its possession the raw data with which to prepare a comprehensive analysis of women in the workforce, but does not presently have the capabilities to process such data. The Commission receives annually copies of the employe reports which are required of certain employers by the EEOC. Such reports are used by the Commission in lieu of requiring employers to file separate state reports. The information contained in these reports is confidential, but can be utilized for statistical analysis. The Commission has used the forms in the past to prepare limited reports; specifically, the state university studies cited above were based upon such forms.

In 1968, the Commission prepared a report on Blacks employed in major industries in Kentucky utilizing these forms.[128] This report is a model for what such a study should do. It breaks down employers by regions and by industry-type, and then analyzes the composition of the workforce.

The EEOC reporting forms are required of a number of different types of employers. For the purposes of a workforce study three such forms should be utilized: (1) the EEO-1 form, required of all private employers having over 100 employes; (2) the EEO-4 form, required of all state and local governments; and (3) the EEO-6 forms, required of higher educational institutions. All such forms filed by Kentucky employers are received by the Commission.

This study therefore recommends that the General Assembly enact legislation which will require the Commission on Human Rights to prepare every five years, or less, beginning in 1980, a detailed analysis of the sexual composition of Kentucky's workforce. Such an analysis would utilize the EEOC reporting forms filed by private employers, state and local governments, and higher educational institutions. The exact format of the report should be determined by the Commission, so that it could gather information most useful to the enforcement of the anti-bias laws. The Commission should also be given the discretion to utilize any additional information which might become available, in the preparation of the report. Additionally, the General Assembly should appropriate sufficient additional funds to the Commission so as to enable it to properly prepare the reports as required.

FOOTNOTES

1. 34 Geo. Wash. L. Rev. 232, at 242 (1975).

2. J. Norwood and E. Waldman, "Women in the Labor Force", August, 1979 (unpublished paper), 4.

3. Id. at 2.

4. Id. at 3.

5. Id. at 4.

6. Id. at 1-2.

7. Id. at 4.

8. Id. at 5.

9. Ibid.

10. Id. at 13.

11. Department of Labor, 1975 Handbook on Women Workers, at 72 (1976).

12. J. Norwood, supra note 2, at 13.

13. Department of Labor, "10 Facts on Women Workers", at 1 (1979).

14. Department of Labor, "The Earnings Gap Between Women and Men", at 134 (1979).

15. Handbook on Women, supra note 10, at 83.

16. Ibid.

17. Id. at 85.

18. Id. at 94.

19. Id. at 92.

20. Id. at 93.

21. Id. at 94.

22. Id. at 97.

23. Id. at 95.

24. Id. at 99.

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27. Id. at 98.

28. Id. at 1.

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30. Id. at 125.

31. Ibid.

32. Id. at 135.

33. "Earning Gap Between Men and Women", supra note 14, at 1.

34. Id. at 2.

35. Id. at 4-5.

36. J. Norwood, supra note 2, at 12.

37. "Earning Gap Between Men and Women", supra note 14, at 2.

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39. J. Freeman, "The Building of the Gilded Cage", in Discrimination Against Women, 289 (1973).

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45. Ibid.

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50. Executive Order No. 10,980 (1961).

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63. 42 U.S.C., Sec. 2000e-5.

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97. Rosenfeld v. Southern Pacific Co., 444 F.2d 1219, 1225 (9th Cir., 1971).

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103. 29 C.F.R., Sec. 1604.3.

104. Palmer v. General Mills, Inc., 513 F.2d 1040, 1043 (6th Cir., 1975).

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RESOLUTION OF THE DEMOCRATIC WOMAN'S CLUB OF KENTUCKY

CONCERNING EQUAL RIGHTS FOR WOMEN

WHEREAS, Kentucky women comprise 41% of the workforce in the state, and

WHEREAS, approximately 66% of the working women in Kentucky are either single, divorced, separated, widowed or have husbands who make less than 10,000 dollars a year, and

WHEREAS, the median income, according to the U.S. Department of Labor statistics, differs between men and women by approximately 4,230 dollars, and

WHEREAS, it is difficult for Kentucky women to obtain traditionally male jobs,

NOW THEREFORE BE IT RESOLVED that the Kentucky Democratic Woman's Club hereby propose that the Democratic Leadership of the General Assembly direct the Legislative Research Commission to conduct a comprehensive study and propose legislation, or legislative changes pertaining to sex discrimination in employment for the 1980 Legislative session.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Secretary of the Democratic Woman's Club of Kentucky spread a copy of this resolution upon the pages of the official proceedings of this 51st Convention of the Democratic Woman's Club of Kentucky and a copy of the same shall be furnished to the Democratic Leadership of the General Assembly.

Unanimously adopted by the Democratic Woman's Club of Kentucky, October 7, 1978, at their 51st Convention held at the Drawbridge Motor Inn, Ft. Mitchell, Kentucky.

RESOLUTIONS COMMITTEE:
Mae Peniston, Chairman
Kay Anne Wilborn
Mary Glenn Searcy
Oteria O'Rear
Alberta Johnson
May Foster
Janet Farmer
Millie Dickinson
Phyllis Barnes